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INTRODUCTORY STATEMENT.

The first report of the Judicial Council of Massachusetts was filed with His Excellency the Governor on November 30, 1925. Reprints were obtained and bound up herein so that members of the Association may have an opportunity to examine the report and express any views which they may have, in regard to the subjects discussed, at the annual meeting of the Association which will be held at the Chamber of Commerce Building, 80 Federal Street, Boston, on Wednesday, December 9, at 4.00 P. M. The Report of the Judicature Commission which is referred to in the following report will be found in the QUARTERLY for January, 1921.

F. W. GRINNELL,
Secretary.

FIRST REPORT

OF THE

JUDICIAL COUNCIL OF MASSACHUSETTS

CREATED BY CHAPTER 244, GENERAL ACTS OF 1924

NOVEMBER, 1925

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The Commonwealth of Massachusetts

NOVEMBER 30, 1925.

To His Excellency ALVAN T. FULLER,
Governor of Massachusetts.

In accordance with the provisions of chapter 244 of the General Acts of 1924 we have the honor to transmit the following report of the Judicial Council.

WILLIAM CALEB LORING.
FRANKLIN G. FESSENDEN.
CHARLES T. DAVIS.
WILLIAM M. PREST.
FRANK A. MILLIKEN.
ADDISON L. GREEN.
ROBERT G. DODGE.
FREDERICK W. MANSFIELD.
FRANK W. GRINNELL.

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GENERAL ACTS OF 1924, CHAPTER 244.

AN ACT PROVIDING FOR THE ESTABLISHMENT OF A JUDICIAL COUNCIL TO MAKE A CONTINUOUS STUDY OF THE ORGANIZATION, PROCEDURE AND PRACTICE OF THE COURTS.

Be it enacted, etc., as follows:

Chapter two hundred and twenty-one of the General Laws is hereby amended by inserting after section thirty-four, under the heading "Judicial Council", the following three new sections: — *Section 34A.* There shall be a judicial council for the continuous study of the organization, rules and methods of procedure and practice of the judicial system of the commonwealth, the work accomplished, and the results produced by that system and its various parts. Said council shall be composed of the chief justice of the supreme judicial court or some other justice or former justice of that court appointed from time to time by him; the chief justice of the superior court or some other justice or former justice of that court appointed from time to time by him; the judge of the land court or some other judge or former judge of that court appointed from time to time by him; one judge of a probate court in the commonwealth and one justice of a district court in the commonwealth and not more than four members of the bar all to be appointed by the governor, with the advice and consent of the executive council. The appointments by the governor shall be for such periods, not exceeding four years, as he shall determine.

Section 34B. The judicial council shall report annually on or before December first to the governor upon the work of the various branches of the judicial system. Said council may also from time to time submit for the consideration of the justices of the various courts such suggestions in regard to rules of practice and procedure as it may deem advisable.

Section 34C. No member of said council shall receive any compensation for his services, but said council and the several members thereof shall be allowed from the state treasury out of any appropriation made for the purpose such expenses for clerical and other services, travel and incidentals as the governor and council shall approve.

Approved April 12, 1924.

MEMBERS OF THE COUNCIL.

WILLIAM CALEB LORING of Boston, *Chairman*

FRANKLIN G. FESSENDEN of Greenfield
WILLIAM M. PREST of Boston
ADDISON L. GREEN of Holyoke
FRANK W. GRINNELL of Boston, *Secretary*
CHARLES T. DAVIS of Marblehead
FRANK A. MILLIKEN of New Bedford
ROBERT G. DODGE of Boston
FREDERICK W. MANSFIELD of Boston

FIRST REPORT

OF THE

JUDICIAL COUNCIL OF MASSACHUSETTS.

To His Excellency
ALVAN T. FULLER,
Governor of Massachusetts.

The Judicial Council was brought into being by St. 1924, c. 244 (a copy is printed on the opposite page), "for the continuous study of the organization, rules and methods of procedure and practice of the judicial system of the commonwealth, the work accomplished and the results produced by that system and its various parts." It is provided in the act that "The judicial council shall report annually on or before December first to the governor[1] upon the work of the various

[1] The act creating the Council followed substantially the plan first recommended by the Judicature Commission in its second and final report (House No. 1205 of 1921) with some modifications. The reasons for the creation of the Council were explained by that Commission on pages 25–28 of their report. The reasons for their recommendation that the report be made to the Governor, rather than to the General Court, were not stated in the report of the Commission, but, in view of the discussion of the question before the Judiciary Committee, these reasons were subsequently stated in a letter to the chairman of that committee, dated May 20, 1921, and signed by Judge Sheldon and Messrs. Nutter and Green, the three members of the Commission (see Massachusetts Law Quarterly, August, 1921, p. 150).

The reasons thus stated were quoted in the report of Attorney General Benton for 1924 in connection with his support of the plan of a Judicial Council. In order that these reasons may be conveniently available for those who are not familiar with them, they are quoted from this letter.

They recommended "that the reports be made to the Governor, as they do not believe it wise to place the judges, who would be members of such a Council, in the position which might be misunderstood if they were expected to make annual recommendations to the Legislature, possibly altering some of their powers and duties.

"We believe it to be the sounder plan that the report should be submitted to the Governor for the information of the public as well as for the members of the State government, and that recommendations to the Legislature based upon such reports should be made by others, or such recommendations as might be contained in it should be called to the attention of the Legislature either by the Governor or by individuals or by members of the Legislature themselves.

"The traditions of Massachusetts in regard to the separation of functions are such that to place five judges in the position of making annual formal recommendations to the Legislature might be seriously misunderstood and thus cause unfortunate results which might interfere to a considerable extent with the success of the plan."

branches of the judicial system. Said council may also from time to time submit for the consideration of the justices of the various courts such suggestions in regard to rules of practice and procedure as it may deem advisable."

The personnel of the Council was completed on November 1, 1924. It organized on November 8. It held meetings each fortnight beginning November 8 and ending June 13, and again beginning September 12 until October 1, and thereafter until November 14 it met weekly. Work, and a great deal of work, has gone on between these meetings and during the intermission between June 13 and September 12.

The problem set for the Council is broad and far reaching. It must seem so without doubt to every one, be he layman or lawyer. But the year's work has brought home to the members of the Council the extent of the problem in a way which they find it hard to put into words. The problem as it exists today cannot be met by the study of one year or of several years. Not only that, but the problem must of necessity change from time to time. It was for this reason (without doubt) that the Council was created "for the continuous study" of the judicial system of the Commonwealth. The Council recognizes that the investigation and study made by it during the year that has come to an end is but a beginning.

THE CONGESTION IN THE SUPERIOR COURT.

The Judicial Force of the Superior Court.

In this year (1925) the Chief Justice of the Superior Court asked the Legislature for six more associate justices. The Legislature gave him two, and by Resolve 27 (a copy is printed in the footnote[1]) in effect asked the Council if something could

[1] *Resolved*, That the judicial council is hereby requested to investigate ways and means for expediting the trial of cases and relieving congestion in the dockets of the superior court, and, among other things, the advisability of increasing or of wholly removing the ad damnum limits of district court jurisdiction in civil cases; measures for discouraging frivolous appeals; measures for requiring parties to frame issues in advance of trial by greater specification in the declaration of what the plaintiff in good faith claims and greater specification in the answer of what the defendant admits or in good faith denies, with suitable penalties for frivolous or unfounded allegations and denials; ways and means for encouraging, so far as consistent with constitutional rights, trials without jury, including specifically an inquiry into the operation of the laws of Connecticut and Maryland relative to the waiver of jury trials in criminal cases; and any other ways and means that may appear feasible to said council for improving and modernizing

not be done "for expediting the trial of cases and relieving congestion in the dockets of the superior court" except increasing the number of the justices of that court.

In the light of what had been done during the preceding fifty years the question was a natural one. During that period it had been the custom of the Legislature from time to time to add to the number of associate justices of the Superior Court. In the thirty-seven years next before 1922 the number had been trebled. The court began in 1859 (St. 1859, c. 196) with a chief justice and nine associate justices. At the end of the year 1922 the number was thirty, a chief justice and twenty-nine associate justices.[1] Later on the Chief Justice of the Superior Court had been given authority (St. 1923, c. 469, amended by St. 1924, c. 485) to call up justices of district courts to sit in the Superior Court and try criminal cases with juries which were in fact within the jurisdiction of their own courts. During the year ending November 30, 1924, the district court justices called up under these statutes sat 622 court days,[2] the equivalent (in substance) of the work of three

court procedure and practice so that, consistently with the ends of justice, the proverbial delays of the law and attendant expense, both to litigants and the general public, may be minimized. [*Approved April 24, 1925.*

[1] 1 was added by St. 1875, c. 230.
1 was added by St. 1886, c. 31.
2 were added by St. 1888, c. 58.
2 were added by St. 1892, c. 271.
2 were added by St. 1896, c. 526.
3 were added by St. 1902, c. 383.
2 were added by 1903, c. 472, § 2.
2 were added by St. 1907, c. 286.
3 were added by St. 1911, c. 567.
2 were added by St. 1922, c. 532, § 3.
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[2] Table showing Number of Days of Service of District Court Judges in the Superior Court in Criminal Cases under St. 1923, Chapter 469, by Counties from December 1, 1923, to November 30, 1924.

	Days
Bristol	14
Essex	91
Hampton	6
Hampshire	38
Middlesex	117
Plymouth	42
Suffolk	244
Worcester	70
Total	622

additional justices. The judicial force of the Superior Court, therefore, must be taken to have been thirty-three judges in the year ending June 30, 1924.

Causes of Congestion in the Superior Court.

Before the question asked by the Legislature is discussed it is necessary to understand the extent of the congestion in the Superior Court and to realize what it is and in what it consists. The best way of doing that is to tell the story of what brought it about.

Apart from the ordinary increase in the burdens of the court the first cause of the congestion comes from the burdens cast by the Legislature upon the Superior Court to give relief to the Supreme Judicial Court, and thereby enable that court to perform, as the court of final resort, the most important of the duties resting upon it.

This policy began forty-five years ago.

Forty-five years ago the more important actions at law were tried in the Supreme Judicial Court. That court had jurisdiction of actions of tort, contract and replevin where the amount sought to be recovered was $4,000 in Suffolk and $1,000 in other counties. In 1880 (St. 1880, c. 28) the court's concurrent jurisdiction in actions of tort, and in 1905 (St. 1905, c. 263) its concurrent jurisdiction in contract and replevin, was brought to an end, and all that work devolved on the Superior Court.

In 1880, when this period began, the Superior Court had no jurisdiction in equity. By 1925 it had become the principal court for the original administration of equity throughout the Commonwealth. In 1883 (St. 1883, c. 223) it was given juris-

From December 1, 1924, to October 31, 1925, a period of eleven months, district court judges sat in the Superior Court 773 court days, as follows:

	Days
Bristol	12
Berkshire	20
Essex	105
Hampshire	24
Middlesex	196
Norfolk	18
Plymouth	41
Suffolk	292
Worcester	65
Total	773

diction in equity concurrent with the Supreme Judicial Court. In 1922 (St. 1922, c. 532, § 1) the Supreme Judicial Court was authorized to transfer to the Superior Court any suit in equity originally brought in that court. By 1925, acting under this authority, the Supreme Judicial Court had relieved itself of most of its original jurisdiction in equity. The Supreme Judicial Court has retained some cases of general jurisdiction in equity originally brought in that court, and the probate courts have a limited equitable jurisdiction. But what is for the most part the whole burden of administering equity throughout the Commonwealth has been cast upon the Superior Court, — a court (it is to be borne in mind) which at the beginning of this period had no equitable jurisdiction at all.

Forty-five years ago the Superior Court had no jurisdiction over petitions for divorce, annulment of marriage and custody of children. In 1887 (St. 1887, c. 332) this jurisdiction was taken from the Supreme Judicial Court and cast upon the Superior Court.

Again, forty-five years ago all issues of fact framed for trial by jury in suits in equity and in probate appeals pending in the Supreme Judicial Court were tried at the bar of that court. In 1895 (St. 1895, c. 116) the Supreme Judicial Court was given authority to send such issues to the Superior Court for trial. For many years the court did not take advantage of this authority and continued to have these issues of fact tried by jury at the bar of its own court. Later on, however, the Supreme Judicial Court had to change its policy and they sent to the Superior Court for trial all issues framed in its court for trial by jury. The last of the sixteen jury terms of the Supreme Judicial Court provided for by statute was held in 1913, except for an isolated term held in Worcester by the Chief Justice in April, 1920. All issues framed for trial by a jury in equity causes are now tried in the Superior Court, and the jurisdiction of the Supreme Judicial Court for the retrial of facts in probate appeals having been brought to an end by St. 1919, c. 274, all issues to be tried by a jury in probate proceedings are framed in the probate court and tried in the Superior Court as are issues framed in the Land Court (St. 1910, c. 550). In this way the trial of all issues framed for

trial by jury which forty-five years ago was a burden of the Supreme Judicial Court has been added to the burdens of the Superior Court.

Forty-five years ago the burden of trying indictments for capital crimes rested upon the Supreme Judicial Court. In 1891 (St. 1891, c. 379) the burden was put upon the Superior Court.

By St. 1879, c. 255, § 1, claims against the Commonwealth for payment of money were added to the jurisdiction of the Superior Court.

On the other hand, the Superior Court has been relieved by St. 1912, c. 469, which substituted for an appeal from the Municipal Court of the City of Boston to the Superior Court (in order to give to defendants their constitutional right to a trial by jury) a right to remove a civil action in that court to the Superior Court before trial in the court below. This was extended to all district courts by St. 1922, c. 532.

By the adoption of the workmen's compensation system the Superior Court was relieved of much litigation arising out of industrial accidents.

Since 1898 practically all litigation affecting the title to land, except bills in equity, has been transferred to the Land Court.

Also, by St. 1922, c. 532, concurrent jurisdiction in divorce and annulment of marriage was given to the probate courts.

The great burdens thus cast upon the Superior Court in the last forty-five years are —

(1) The burden of trying the important as well as the less important actions of contract, tort and replevin;

(2) Nearly the whole burden of equity jurisdiction;

(3) Nearly the whole burden of libels for divorce and nullity of marriage;

(4) The burden of all trials of actions at law and of the trial of issues framed for trial by jury, in equity suits, in cases in the Land Court and in probate proceedings;

(5) The trial of indictments for capital crimes.

There is a second cause of congestion in the Superior Court. This is due to an abuse of the right of appeal to the Superior Court in criminal cases. An appeal to the Superior Court is given to defendants in criminal cases convicted and sentenced

in district courts to secure to them their constitutional right of trial by jury. Finding the Superior Court unable to try all the cases on its docket, defendants in criminal cases in district courts have taken appeals to the Superior Court, not to secure a trial by jury, but to take advantage of the situation in the Superior Court caused by the congestion of its docket. Of necessity some disposition has to be made of the cases which the court cannot try. They may be placed on file, a fine may be substituted for imprisonment, they may be *nol prossed*, or some other disposition of them made by the district attorney. The appeals which are the cause of the second main congestion of the Superior Court are taken by defendants in the hope that their cases may be among those which are disposed of without trial, and that in this way a more beneficial result will be obtained than that meted out in the court below. It is these appeals taken *mala fide* which constitute the second cause of the Superior Court's congestion. They are so numerous that an end must be put to them or the attempt to overcome the congestion which now exists in the Superior Court must to a large extent be unsuccessful.

The extent of the congestion now existing in the Superior Court is told by the statement of returns relative to the law, equity, divorce and criminal business of the Superior Court for the year ending June 30, 1924, made in compliance with G. L., c. 221, § 24, and St. 1924, c. 131; a copy of these returns is printed in Appendix B. From these returns it appears that there were 64,057 civil and criminal cases pending in the Superior Court at the beginning of the year ending June 30, 1924, and that there were 63,499 at the end of that year, a decrease of 558. But the decrease in the number of libels for divorce amounted to 2,044. So that apart from the libels for divorce there was an increase of 1,486.

The extent of the present congestion in the Superior Court is also told by a table dated February 13, 1925 (printed in Appendix B), showing the "average time between date of writ and trial" in jury cases in the several counties of the Commonwealth. This was compiled from questions put to the clerks of the courts by the Chief Justice of the Superior Court. The average time in Suffolk County was two years and five months if the case was on the general list, and two years and

one month if the case was on the special list. In Essex and Bristol counties the average time was even longer. The average time given for those counties was: For Essex: Salem, three years, seven months; Lawrence, three years, two months; Newburyport, two years, nine months. For Bristol: Taunton, three years, three months; New Bedford, three years, nine months; Fall River, three years, five months. The condition in Norfolk and Barnstable was better; but even there the average time was one year and one month.

Modern English Procedure.

This brings us to a consideration of the question in effect asked by the Legislature: Cannot something be done "for expediting the trial of cases and relieving congestion in the dockets of the Superior Court" except increasing the number of the justices of that court?

Before the question was asked by the Legislature the Council had taken up the study of the procedure in the English Courts,[1] because since 1875 they have developed from dilatory to prompt and effective tribunals. For this reason their methods are being studied today all over the United States.

To supplement the investigation which had been made by a study of some of the books on the subject, Mr. Dodge, at the request of the Council, went to London in July of this year to learn, by seeing it in operation, what the procedure really was. His report is printed in Appendix A, page 67.

At the meeting of the American Bar Association, held in Detroit in September last, Professor Sunderland of the Law School of the University of Michigan read a paper entitled "An Appraisal of English Procedure." This paper was pre-

[1] The books on this subject are: Indermaur's "Manual of Practice;" "The Yearly Practice of the Supreme Court" (Sir Willes Chitty, Bt., and H. C. Marks); "The Annual Practice," by White, King & Stringer; Rosenbaum's "Rule Making Power." A short statement of the procedure is to be found in the Introduction to Hopkins' "New Federal Equity Rules" (4th ed.), pp. 16–26. Also, at pages 27–33 the answers are printed which were given by Lord Loreburn to questions put to him by Mr. Justice Lurton, who went to England in the vacation of the year 1911 to study the modern English Chancery Practice in connection with the new Federal Equity Rules. The reports of the English Judicature Commission of 1869 and 1872, an account of civil practice secured by Hon. Joseph H. Choate in 1903, and a study of English Criminal procedure by a committee of the American Institute of Criminal Law and Criminology are all printed in Massachusetts Law Quarterly for May, 1920.

pared after a study of the courts on the spot during a period of six months. With the permission of Professor Sunderland it is reprinted in Appendix A, page 79.

No one can read Mr. Dodge's Report and Professor Sunderland's Appraisal without a feeling of admiration for the judicial system in force today in England and Wales. It is a wonderful system. It runs smoothly and is remarkably efficient. It reaches a long way toward the goal to be reached by the ideal judicial system so well described by Mr. Justice Riddell of the Superior Court of Ontario (when speaking of the Canadian system) in these words: "We . . . regard the courts . . . as a business institution to give the people seeking their aid the rights which facts entitle them to, and that with a minimum of time and money. We are a poor and a busy people. We cannot afford to waste either time or money."

Further, no one can read Mr. Dodge's Report and Professor Sunderland's Appraisal without coming to the conclusion that in comparison with the system existing in England and Wales the system in use in the courts of Massachusetts is crude and inefficient.

For one thing, the efficiency of the English procedure is shown by the volume of litigation in the High Court of Justice. The High Court of Justice, like the Superior Court in Massachusetts, is the great trial court of England and Wales. It appears from the Comparative Table giving "The Total Proceedings commenced in All Courts" in England and Wales from 1899 to 1923 (Civil Judicial Statistics, England and Wales, 1923, at page 4) that the "Total Proceedings commenced" in the High Court (leaving out the Probate, Divorce and Admiralty Division) was 115,763 in the year 1923.

The efficiency of the English procedure is still more strikingly shown by the comparatively small number of judges who dispose of this great volume of litigation. In 1923 there were 16 judges of the King's Bench Division of the High Court (there are now 18) and 6 justices of the High Court attached to the Chancery Division. One of the features of the English procedure which enables this comparatively small judicial force to handle this great volume of litigation is the work done and the assistance given by the masters, and those who have and

exercise the powers of masters. Except in commercial cases most of the preliminary proceedings in an action before trial are heard and decided by the masters of the High Court in actions pending in London, and by the registrars of the High Court in actions pending in the district registries of that court. Other features of the system which enable the small judicial force in England to handle the large volume of litigation handled by them are to be found in the fact that the proportion of jury-waived cases tried is extremely large and the various characteristics of the English trial which have a tendency to speed it up, such for example, as the absence of long arguments over the admissibility of evidence or over requests for instructions to the jury and the greater effectiveness of the judge in keeping the trial confined to material issues.

The preliminary proceedings heard and decided by the masters and the registrars are in the nature of the proceedings which are disposed of by the Superior Court in Massachusetts in motion sessions. These masters and registrars (who exercise the powers of masters) are really part of the judicial force of the High Court. But it does not seem possible to state how much is added to the judicial force of the High Court by reason of the work done by them.

The registrars of the district registries of the High Court have and exercise the powers exercised by masters in actions pending in the London office of the High Court. (See R. S. C. Order XXXV, Rule 6, and note on page 505 of the "Yearly Practice of the Supreme Court for 1925.") For the most part the registrars of the High Court are also the registrars of the county courts.[1] (See "Law List for 1924," at page xiv, for the registrars of the High Court and page xxix for the registrars of the county courts.) Of the 115,763 "proceedings" brought in the Chancery and King's Bench Divisions of the High Court in the year 1923, 43,779 were brought in district registries.

This, however, may be said, and perhaps it is all that can

[1] The creation of district registries was authorized by Section 60 of the Supreme Court of Judicature Act of 1873 (36 & 37 Vict., c. 66). Of the 88 original district registries 80 covered the area covered by county courts. (See the "Yearly Practice of the Supreme Court for 1925," p. 1502.) There are some 90 odd district registries today. (See "Law List, 1924," p. 1414.)

be said, as to the judicial force which disposes of the great volume of "proceedings" brought in the Chancery and King's Bench Divisions of the High Court, which in the year 1923 amounted to 115,763; the 22 judges of the High Court (there were 22 in the year 1923, there are 24 now) were greatly assisted in handling the great volume of litigation by the work of the masters and district registrars of the High Court.

It does not seem possible to make a comparison between the judicial force of the High Court and the judicial force of the Superior Court of Massachusetts beyond stating that in 1923 there were 33 justices of that court, including the services of the justices of the district courts called up to sit in the Superior Court. In addition, assistance was given to the judicial force of the Superior Court by the services of masters and auditors.[1]

To make one more comparison between the High Court and the Superior Court of Massachusetts: In Massachusetts the time between the entry and the trial of an action was shown to be from one year and one month to three years and nine months. In England a bitter complaint was made in the "Law Times" of December 20, 1924, quoted in Mr. Dodge's Report: "It is scandalous that litigants should have to wait six months and more after their causes are entered for trial before there is even a likelihood of a judicial hearing. This is what has happened during recurring periods in the past fourteen years, and it is only after repeated pressure that temporary relief is given, and when that is withdrawn the same uncertainty and delay return."

Unquestionably the modern English system of procedure in the Chancery and King's Bench Divisions of the High Court is far more effective than that in use in Massachusetts.

Can any part of it be adopted here today?

The Council is not prepared in this report to deal with the second and third of the three major divisions of procedure described by Professor Sunderland, namely, the trial of cases in court and proceedings for review.

The first of Professor Sunderland's three major divisions "relates to the preparation and docketing of cases for trial." In

[1] No attempt has been made to compute the amount of assistance given by masters and auditors. It may be stated that the number of suits in Suffolk County sent to special masters for trial in the year ending June 30, 1925, was 258.

the opinion of the Council no attempt at the present time ought to be made to adopt the whole of the English system, which relates to this division.

Three of the outstanding characteristics of this part of the English system are: (1) Speed in getting the case ready for trial; (2) the method of dealing with admissions, interrogatories and documents which by the use made of them enables the parties to dispose of matters before trial about which no controversy ought to be made, so that the trial is devoted from the outset to what are the matters really in controversy between the parties; and (3) separating debt collecting from controversial litigation.

There are great difficulties in the way of adopting here the English practice of sending each case to a master or registrar under a summons for directions. Whether that practice or some equivalent practice can be adopted in Massachusetts is a matter as to which the Council, with the time at their disposal, has not been able to come to a final conclusion. It is reserved for further study.

The separation of debt collection from controversial litigation (the third and last of the three characteristics already mentioned) is of great importance and in the opinion of the Council ought to be adopted so far as it can be in view of the provisions of our Constitution. The English system of discovery and of notice to admit facts and documents are among the measures used in England to reduce cases before trial to what are the real matters in controversy between the parties. The Massachusetts practice in these matters can be and ought to be improved in the light of the English system. These will be considered later on.

ADMINISTRATION OF CRIMINAL JURISDICTION.

District Court Judges Sitting in the Superior Court.

Under this head our recommendation is: Make permanent St. 1923, c. 469 (amended by St. 1924, c. 485), authorizing the Chief Justice of the Superior Court to call up justices of the district court to sit in the Superior Court and try cases of misdemeanor, except conspiracy and libel, with juries. The act expires on July 1, 1926. As we have already said, the work

done by these district court judges in the year ending November 30, 1924, was the equivalent of work which would be done by three additional judges of the Superior Court. The device is an admirable one, as it provides a reserve corps of judges which enables the Chief Justice to increase temporarily the judicial force of the court. While the power to call on these judges should be made permanent, the system must be studied with a view to changes which will gradually reduce the congestion requiring this service. It ought not to be used for the purpose of adding permanently to the judicial force. To some extent these services in the Superior Court disturb the work in the district courts. But taking it as a whole, it is a measure of possible relief which in the present and possible future congested condition of the docket of the Superior Court from time to time ought to be continued. To let the practice of calling up justices from the district courts come to an end now would be to cut down the present judicial force of the Superior Court. In the opinion of the Council, it is of vital importance that St. 1923, c. 469 (amended by St. 1924, c. 485), should not be allowed to lapse on July 1, 1926. An act to continue it in force is to be found in Appendix C, page 135.

Election of Jury Trial in the Municipal Court of the City of Boston, and Review of Sentences there Imposed.

The Judicature Commission in its report pointed out that a great weakness in our system of administering the criminal law lay in the opportunities for abuse of the present right of appeal. An appeal from the district courts is now provided to give defendants an opportunity to claim their constitutional right to a jury trial in the Superior Court. Theoretically that is the purpose of all such appeals. Practically, however, it is common knowledge that in a very large number of cases the defendants appeal not for a jury trial but to take advantage of the congestion in the Superior Court and by adding to that congestion, force the prosecuting officers to recommend and the court to approve of some modification of the sentence below simply because there is no other way of disposing of cases for the trial of which there are not, and under the present system never will be, courts, juries or prosecuting

officers enough. This situation is not peculiar to our State courts. Badly regulated appeal systems make one of the weak spots in the American judicial machinery for the criminal law. All this was vividly pictured in the report of the Judicature Commission, pages 91 to 94. The only step that has been taken to check the abuse is the act allowing district court judges to sit with juries in the Superior Court to which we have already referred. That act, which followed the report of the Judicature Commission, cut down the appeals considerably and avoided many trials in cases in which defendants decided to plead guilty when they found they could get a second trial which they did not want. But that act alone is not enough to cure the trouble. Other plans must be tried if the community is to control its criminal element. The present system is so weak that many guilty persons are provided with the opportunity to dictate what shall be done to them by the simple process of clogging the machinery. Merely adding judges has not cured and will not cure the trouble, because we are trying to do the work of 1925 with a system adapted to 1875. While we have made many improvements in our civil procedure in recent years, there has been little advance on the criminal side since the simplification of criminal pleading which followed the report of the special commission of 1899. Except for that we have tried the experiment of doing nothing but add more judges, and that experiment has failed so far as this problem is concerned. It is time to try something else.

The Judicature Commission in 1921 recommended a plan for trial in the Boston Municipal Court under which a defendant should elect in that court whether he wanted to be tried by jury. If he claimed a jury he should be sent at once to the Superior Court. If he did not claim a jury he should be tried in the Municipal Court and should have no appeal on the facts, but should have a right to appeal on questions of law to the appellate division of that court which deals with such questions. In addition to this — and here is the nub of the plan — he would have a right to apply for a prompt revision of his sentence, not to the district attorney and Superior Court, which is so congested that he can often

dictate a modification of his sentence, but to a judicial tribunal of three judges of the Municipal Court, who will give him the only thing he is justly entitled to, — a fair hearing. We believe this plan is a simple, businesslike arrangement. We believe it will work effectively in practice. It is not new. It has been discussed and argued over for ten years or more. The Judiciary Committee of the Legislature reported it favorably in 1923 (S. 361), but instead of limiting it to the Boston court, as recommended by the Judicature Commission, they proposed to apply it to all the district courts. We think the advice of the Judicature Commission should now be followed and the plan adopted for the Boston court alone. The judges of that court made a success of the act of 1912 which abolished civil appeals, and in 1922 that act was extended to all district courts. We believe that the judges of the Boston court can make this plan for criminal cases work effectively if they are given the chance. We do not believe the Commonwealth can afford not to try this plan when the public are clamoring for some constructive work to meet the problem of crime. Promptness is needed in the criminal law. Promptness is impossible under the present appeal system.

The Council recommends the act relating to this subject printed in Appendix C, page 135.

Waiver of Trial by Jury in Criminal Cases in the Superior Court.

The Legislature, by Resolve, Chapter 27, already quoted, requested the Council to investigate "ways and means for encouraging, so far as consistent with constitutional rights, trials without jury, including specifically an inquiry into the operation of the laws of Connecticut and Maryland relative to the waiver of jury trials in criminal cases."

THE CONNECTICUT PRACTICE.

In Connecticut, the first statute allowing such waiver was passed in 1874. The constitutionality of the act was sustained by the Connecticut Supreme Court of Errors in State *v.* Worden, 46 Conn. 349. It was repealed in 1878 after some contro-

versy.[1] In spite of the controversy and repeal the Connecticut Legislature again tried the experiment forty-three years later by chapter 267 of the Public Acts of 1921 which provided:

SECTION 2. In all criminal causes, prosecutions and proceedings the party accused may, if he shall so elect when called upon to plead be tried by the court instead of by the jury; and in such cases the court shall have jurisdiction to hear and try such cause and render judgment and sentence thereon.

There now appears to be no agitation about it. Mr. Fuller, the assistant clerk of the Hartford court, writes of the practice under it as follows:

The accused, or his attorney, should make the election to be tried by the court, if it is so desired, at the time of the plea. If no election is volunteered at that time the clerk or the court usually inquires if the accused desires to be tried by the court or by the jury. If he elects to be tried by the court, notation to that effect is made on the docket and the information. If he does not elect the court no record is necessary because then he is tried in the usual manner before the jury.

Since this law went into effect some four years ago, there have been, roughly, about 70 per cent of the cases tried by the court and about 30 per cent by the jury.

In reply to further inquiries he answered:

There seems to be among lawyers, and presumably among their clients, a feeling that in cases where a minor offence is charged a jury is inclined to put the burden upon the accused to show that he is not guilty — that the fact that he is in court charged with the crime tends to show the probability of his having committed the crime. They also feel that a jury is more likely to be affected by emotion and prejudice, and sometimes convicts on general principles rather than solely upon the evidence offered in court, and that if there is a real defence the jury is more likely to overlook it than the court.

In Connecticut a grand jury is required only in cases where the punishment is death or life imprisonment.

The jury is more often waived in cases of minor offences — also violation of the liquor law and attacks upon women.

The last two years the percentage of convictions by the jury has been, roughly, about 90 per cent, and that by the court about 70 per cent.

A trial by the court expedites matters considerably, as often three cases

[1] We are indebted, for an account of the matter, to Mr. Justice Maltbie of the Supreme Court of Errors of Connecticut.

can be tried in the time that one would take to the jury. In addition, there is a considerable saving of money, as the ordinary jury costs something over $100 a day.

An illustration of the way in which the Connecticut court administers the act appears in the very recent case of State *v.* Rankin, decided February 23, 1925. As the opinion by Chief Justice Wheeler gives a picture of it in action, we reprint this opinion in Appendix A, page 112.

THE MARYLAND PRACTICE.

An explanation of the Maryland practice and its history by Hon. Carroll T. Bond is printed in Appendix A, page 97. Judge Bond is a judge with practical experience in administering the system in a criminal court in Baltimore, and is now the Chief Judge of the Maryland Court of Appeals. He states that the statutory authority for the practice of electing a trial without jury appears in the Maryland Code of Public General Laws, Art. 27, § 492, which, in its present form, dates from 1860 and reads:

> Any person presented or indicted may instead of traversing the same before a jury, traverse the same before the court, who shall thereupon try the law and the facts. (See Appendix A, page 103.)

The practice, however, of trying cases before a judge without a jury was older than the statute, and the statute of 1860 was merely a recognition of a practice which had been gradually developed to the satisfaction of the community by the courts. After tracing the history of the provision, he states:

> So, in this state, the practice is one of respectable age, and it seems to Maryland lawyers to be fully as natural a part of the administration of criminal justice as does the jury trial. They have been quite unaware that there was anything extraordinary in it, and are always surprised when they learn that in other jurisdictions an accused cannot have a trial without a jury if he wishes it.
>
> A docket of jury trials only is something of which Maryland lawyers can hardly conceive; and it would dismay them. It would slow down the court work greatly, and the courts would have to be multiplied to cope with the work. And, of course, the demands upon citizens for jury service would be increased.

Within the memories of living men far the greater number of trials in criminal cases in Baltimore City have been held before judges alone. A like experience is reported from the county courts. In the year 1924 over 90 per cent of all the cases tried in the criminal court of Baltimore City were so tried. A count made ten or twelve years earlier showed 70 per cent so tried, and this is probably the lowest percentage now likely in the course of any of the variations. Ordinarily two criminal courts are sufficient to care for the criminal dockets in the city, which has a population of nearly 800,000. At times there is not enough unfinished business for two courts, and one is able to keep up the work. It is ordinarily possible to give trials without any delay beyond such time as may be needed for preparation, and there are times when the court seems too close on the heels of the Grand Jury, when the court is prepared to give trial on the day after indictment. For some years, now, only one jury panel has been kept in attendance upon the two criminal courts, and, even so, the jurymen spend much of their time sitting aside as spectators. Of the 1,500 criminal cases docketed during the four months of the January, 1925, term of the criminal court of Baltimore City all except 177, mostly those last docketed, were disposed of before the final day of the term. Unquestionably this comparatively rapid disposal of business is due to the prevalence of trials without juries. There is no common length for trials in that form, of course, but they are very much shorter than jury trials. It seems safe to say, for a guess, that the non-jury trial of a given case requires no more than a third of the time which would be required to try the same case with a jury. This estimate is confirmed by lawyers familiar with the criminal court work.

In connection with the percentages he said in a previous account, in "Massachusetts Law Quarterly" for May, 1921, "Much criminal trial work, which in some other States would be confined to magistrates' courts and the like, reaches our upper trial courts. The frequency of election of court trials in cases of this class goes far to raise the proportion of such elections in all cases taken together."

This is substantially the same information as already reported in regard to the Connecticut practice as far as the practical results are concerned. The detailed figures for the results of the criminal court in Baltimore in 1924 were published in the "Daily Record" of January 6, 1925, which reported that:

> Of the disposed of cases there were 3,722 convictions, 610 acquittals, 176 jury trials and 4,163 court trials. There were 2,188 white persons tried, 1,535 colored persons; 3,388 males, and 335 females. . . ." ("Massachusetts Law Quarterly," February, 1925, p. 90.)

Elmer J. Hammer, Esq., Chief Clerk of the State's Attorney, writes that these figures "are substantially correct except that my records show that of 4,499 cases tried jury trials were asked in 180, or about 4 per cent." He tabulated the kinds of cases thus disposed of, with only 180 jury trials, as shown in the footnote,[1] and the kinds of cases in which the 180 jury trials took place, as shown in Appendix A, page 111. These figures relate simply to Baltimore. He also states that "there were 28 cases of murder tried before the court without a jury." In another letter, printed in Appendix A, page 111, he states, as to the relative number of court and jury trials elected in minor as well as major offenses, "the white and colored percentage is about the same proportionately." The reasons for electing one or the other mode of trial are explained both by Chief Justice Bond and Mr. Hammer in Appendix A, pages 105 and 109.

Discussion of the Question whether the Practice should be Adopted in Massachusetts.

A jury at $6 a day for each juror costs $72 a day for every jury trial for the jurors alone, not counting their travel or the other jurors kept in attendance but not drawn, and, when the other costs of judge, clerk, court officers, space, heat, etc., are considered, the cost would probably amount to about $300 per day.

The Massachusetts Commission of 1909 on the "Causes of Delay" estimated the cost of a single jury session for a year at about $30,000. The juror's pay was then $3. With the in-

[1] The following is the number of classified cases disposed of during the year [1924]:

Abortion	3	Incest	1
Arson	2	Kidnapping, abducting female minor	6
Assault to murder, etc.	318	Larceny	1,490
Assault to rape	11	Liquor, no license	19
Attempt burglary	14	Mayhem	4
Assault to rob	27	Unlawful practice of medicine	2
Attempt to rob	3	Miscellaneous, ordinances, etc.	504
Bastardy	118	Murder	82
Bigamy	12	Obstructing justice, interfering with police officer	7
Burglary	604	Violation optometry law	2
Carnal knowledge	19	Pandering	3
Common thief	6	Perjury	3
Compensation law	3	Pickpocket, attempt at larceny	11
Conspiracy	48	Prostitution	50
Deadly weapon	84	Rape	66
Desertion	783	Receiving stolen goods	82
Disorderly house	52	Robbery	166
Embezzlement	109	Selling cocaine	2
False pretense	284	Sodomy, perverted sexual practise	12
Forgery	149	Vagrant	27
Bets on races, gambling, etc.	178		

crease to $6, and the higher cost of everything else, $50,000 is a conservative and perhaps a low estimate of the annual cost of a single jury session today for nine months in Suffolk County. There are at least eleven continuous jury sessions in Suffolk County alone, and of these, four are for the trial of criminal cases. There are often additional criminal jury sessions. Naturally it takes longer to try a case before a judge and twelve jurymen than before a judge alone. It is obvious, therefore, that every case tried without a jury at the request of the accused person would save time and the money of the public and help to relieve congestion in the courts.

Different questions arise as to different classes of crimes. We will take up, first —

1. *Misdemeanors.* (*a*) *Waivers in the District Courts.*

Our whole district court criminal jurisdiction, which covers most "misdemeanors," is based on the practice of waiver of jury trial by most defendants by not appealing. About seventy-five years ago the Supreme Judicial Court decided that the constitutional right to jury trial was sufficiently protected by the right to appeal from the district court and that this right might be waived by failure to appeal after trial and sentence in the district court. (Jones *v.* Robbins, 8 Gray, 329, 341; Com. *v.* Whitney, 108 Mass. 5; Foster *v.* Morse, 132 Mass. 354.)

This being clearly established, there is no constitutional objection to the plan of election in the Municipal Court of the City of Boston which we have already recommended.

(*b*) *Waivers in the Superior Court in Appealed Cases.*

As a result of the discussion of the subject last spring, the Superior Court tried the experiment in Boston of offering defendants in cases appealed from district courts an opportunity of choosing a trial before the court. A few defendants have taken advantage of the opportunity thus far. This experiment seems clearly within the law without further legislation, for, if a man can waive his right to jury trial by not appealing to the Superior Court, he can also waive it after he has appealed to that court by asking for a trial without jury in that court.

2. *Felonies Punishable by not More than Five Years in State Prison.*

By St. 1911, c. 176 (now G. L., c. 218, §§ 26–27), the Legislature extended the criminal jurisdiction of the district courts to include felonies punishable by not more than five years in the state prison, provided that the district court in such cases could not impose a state prison sentence. This proviso was to meet the decision of the Supreme Judicial Court in Jones *v.* Robbins, 8 Gray, 329, that a person accused of an offense involving "infamous punishment" had a constitutional right to be indicted by a grand jury before he was brought up for trial, and that a sentence to the state prison was an "infamous punishment." When such felony cases are begun by complaint in the district courts, therefore, under the statute referred to, and are appealed to the Superior Court, that court cannot impose a state prison sentence because the cases were not begun by an indictment by a grand jury. That court being limited to such a sentence as a district court might impose, such cases fall into the same class as "misdemeanors" so far as the waiving of a jury trial is concerned, although, if brought in the Superior Court by indictment, they might involve a state prison sentence and would then be classed with other felonies.

3. *Other Felonies.*

As to all felonies involving more than five years in state prison which are begun by indictment of a grand jury, a different question arises. Ever since the Revised Statutes of 1836 we have had a statute (now G. L., c. 263, § 6) which provides —

> A person indicted for crime shall not be convicted thereof except by confessing his guilt in open court, by admitting the truth of the charge against him by his plea or demurrer, *or by the verdict of a jury, accepted and recorded by the court.*

and G. L., c. 278, § 2, provides that —

> Issues of fact joined upon any indictment, shall be tried by a jury, drawn and returned in the manner prescribed by law for the trial of issues of fact in civil cases.

These statutes, as they stand, do not recognize a right in the defendant under indictment to waive a jury trial even if he prefers trial by the court. Except in capital cases, we see no sufficient reason why a defendant should not be given the right to waive a jury trial if he wants to, provided there is no constitutional objection. On a matter of such importance the Legislature, if it should consider it advisable to change the statute, might feel it advisable to ask for an advisory opinion of the justices of the Supreme Judicial Court. We recommend in Appendix C, page 140, an amendment allowing an option to the defendant between jury trial and trial without jury by leave of court in all but capital cases if such an amendment is within the constitutional power of the Legislature.

4. *Capital Cases.*

Even if it be within the constitutional power of the Legislature, we do not recommend, at the present time, that the practice of waiver be extended to capital cases, for while it appears to work fairly and to the satisfaction of the public in Maryland, we think there is force in the objection that it is wiser not to place the responsibility for a verdict of guilty in a capital case on the shoulders of one or two judges. We believe that public sentiment in Massachusetts would be opposed to such a step at present, and that it is better, therefore, to continue the practice of compulsory jury trials in capital cases.

COMPLAINTS OF THE COURTS.

There is a well-settled belief that in recent years, and particularly since the conclusion of the World War, there has been a marked increase in crime.

In consequence of this, the administration of the criminal law and of courts exercising criminal jurisdiction has recently been the subject of considerable criticism all over the country, and the courts in Massachusetts have not escaped. Some of the criticism, such as that relating to certain extreme technicalities of criminal pleading, has not applied to Massachusetts

for many years. By St. 1899, c. 409, the Legislature materially simplified criminal pleading following the recommendations in the report of the special commission consisting of Hon. Henry N. Sheldon, Professor Joseph H. Beale, and Frederick E. Hurd, Esq. (Senate Doc. 234 of 1899.)

A careful investigation by the Administrative Committee of the District Courts shows that certain complaints have rested largely upon a misconception of the powers of the courts and the nature of judicial proceedings. But that does not answer all cases of which complaint is made. There are instances where the interest of the public appears to have been overlooked. This has been the result, probably, of various causes, of which the three most important seem to us to be the following: first, a desire to encourage or reform the wrongdoer; second, the crowded condition of the criminal dockets; third, lack of information of the prisoner's prior record.

As to the first, the public needs to be protected against wrongdoers, and the deterrent force of sentences should not be lost sight of. We do not overlook the importance of trying to reform such criminals as are capable of reform, especially the younger ones, and make no condemnation of the probation system. That system has come to stay as it has its proper place in the modern administration of justice. But we think the pendulum has swung too far in the direction of leniency and that this tendency has reached a point at which it has led criminals, especially younger ones in some parts of the community, to hold in contempt the courts that are supposed to restrain their activities. This does not mean that courts should not perform their functions as independently and impartially "as the lot of humanity will admit." That is their constitutional duty. But the protection of society seems to demand that more attention be paid to the deterrent effect of the criminal law. In order to be more effective the results of criminal proceedings need to be prompt. A prompt even if less severe sentence is more important as a deterrent than an uncertain, heavier, and more remote one.

As to the second point, courts and prosecuting officers cannot be blamed for delays that arise from lack of judicial machinery. The situation in respect to the number of judges

available for criminal trials in the Superior Court since the enactment of St. 1923, c. 469 (amended by St. 1924, c. 485) has already been referred to. This has materially relieved the situation in respect to criminal trials in the Superior Court, but as we have stated, we do not believe that the necessary promptness is possible under our present appeal system.

As to the third point, so far as concerns public criticism of the failure to make use of prior criminal records, steps have been taken to make such records more easily available and to increase their use before sentence is passed. The recommendations of the Administrative Committee of the District Courts to the judges and clerks of those courts in their circular of May 19, 1925, are reprinted in Appendix A, page 116.

In order to deal properly with second or subsequent offenders of various kinds a central agency or clearing house is needed where information can be obtained. Such an agency for this State is now being maintained and the records kept by the Probation Commission at its office in Boston. These are accessible to the public prosecutors and courts and should be used. Such an institution might well be made national by some form of interstate co-operation.

The problem of adjusting criminal procedure to the more prompt disposition of business under modern conditions is a very difficult one which requires careful study and which cannot be solved in a hurry. We have already made certain recommendations which we believe to be important in this direction. We must make further study before submitting other recommendations.

There is another aspect of this subject that should not be overlooked. The attitude of the public towards crime and criminals is a serious factor in law enforcement. Is there a tendency to excuse crime and belittle efforts to restrain it? Many thoughtful and conscientious students believe that such is the fact. In this connection it has been suggested that this situation arises, at least partly, from the fact that the public may be confused by the use made of the term "crime."

One of the great obstacles to the prompt disposition of business in the criminal courts lies in the large number of regulatory statutes and ordinances which result from the

complexities of modern life and the enforcement of which has been demanded of the courts as part of their criminal jurisdiction. It is a serious question whether many of these violations of statutes and ordinances should be classed as "misdemeanors" to be dealt with on the criminal side of the courts, or whether they should be taken out of the criminal class and dealt with in some other way, confining the criminal jurisdiction of the courts to those things which can be more fairly described as "crimes." Large numbers of our citizens are experiencing their first, and often their only, contact with our courts in these matters of violation of some regulation, and are given an erroneous and unfortunate impression by finding themselves classed as "criminals" and tried as such. These cases also clog the dockets of the courts and hamper the prompt disposition of cases involving more serious offences.

We have already invested administrative boards with many powers. Whether this can be wisely extended, with proper provisions for appeal, to cover the infringement of regulations that are essentially matters of administration instead of dealing with them in the criminal courts, is a question that is already receiving attention elsewhere. We believe that some relief should be afforded our citizens as well as our courts, and we desire to study this matter further.

While we have no desire to excuse judicial mistakes, we think it only fair to our judges and to the public to express continued confidence in our courts. With 32 judges on the Superior Court, 81 justices and over 144 special justices of district courts, it is not surprising that some mistakes and some differences of judgment and practice occur. But we believe that the judges of the various courts are trying to improve their practice and get better results, and that the public should be reassured in regard to the matter. The problems are countrywide, and we believe we are fortunate in our Massachusetts courts as compared with those in many other parts of the country.

ADMINISTRATION OF CIVIL JURISDICTION.

Separation of Debt Collecting from Controversial Litigation.

The separation of debt collecting from controversial litigation is one of the most important features of the English system of procedure. It is described by Mr. Dodge under the heading of "Specially Endorsed Writs" and by Professor Sunderland under that of "Summary Judgments." Nothing need be added to the description of it given by them. The importance of it is well summed up by Professor Sunderland in these words: "The immense value of the practice is indicated by its wide use. In the year 1923, for example, there were 6,773 summary judgments rendered by the masters of the King's Bench Division as compared with 1,546 judgments entered by the judges after trial of issues. That means that by this device the trial dockets were relieved of 80 per cent of the cases which would otherwise have come before the courts for formal trial, and the claimants in all those cases got their judgments in as many days as it would have required months through ordinary litigation in the courts." To make the statement complete, it appears that in case of actions in the High Court of Justice pending in district registries there were 1,407 summary judgments rendered by the registrars as compared with 402 entered by the judges after trial of issues. (See Table XIII, page 23, Civil Judicial Statistics, England and Wales, 1923.)

As early as 1874 (St. 1874, c. 248, which, with subsequent amendments, now appears as G. L., c. 231, § 59) the Massachusetts Legislature made a beginning in the direction of separating debt collecting from other litigation. This act, which was suggested by the English rule, provides that if a plaintiff makes an affidavit of his "belief there is no defence" to the action, or a defendant makes affidavit of his belief "there is no merit in the action," the other party must consent to a judgment for the amount demanded or a non-suit or file an affidavit specifying the facts on which he relies, and if, after hearing, the court does not find that such facts entitle the party to defend or maintain the action the case shall be advanced for speedy trial. This act is good as far

as it goes, but it is weak when compared with the English system for debt collecting. The constitutional right to a trial by jury prevents the adoption of the English system under which the court or master may make an absolute order for summary judgment after hearing instead of merely advancing the case for speedy trial as is done here. But there is nothing in our Constitution which prevents our making our statute more effective than it is today. In view of the congestion in the Superior Court an order merely advancing a case for speedy trial is not enough. We need some method of checking the use of the right to a jury trial to obtain delay. For this purpose we recommend an amendment to G. L., c. 231, § 59, by which the court shall, after the hearing, enter a conditional order that the defense lacks merit and for summary judgment unless trial is demanded within seven days, and that if it is pressed the case shall not only be advanced for speedy trial, but that if the trial takes place and the party against whom the order is made does not succeed in establishing his defense he shall pay the other party a reasonable sum for expenses, including counsel fees (to be fixed by the court) in addition to the ordinary costs. We believe this experiment with the effective weapon of actual instead of small fictitious costs is reasonable and necessary in these debt-collecting cases.

We submit an amendment for this purpose in Appendix C, page 141.

Declaratory Judgments.

One of the criticisms made of our system of procedure has been expressed in the statement that "We provide no method by which business men can find out what a contract means unless one of them breaks it." In other words, most of our procedure is to give remedies in damages, or otherwise, for violations of contract or other rights, but if the meaning of a contract is doubtful, as it often is, the question cannot be argued before the court without the risk, delay, expense of money and time, and possible friction involved in acting in such a way as to warrant a suit for damages. This seems a fair ground for criticism of our system by the business community. It is unfortunate that a man who wishes to do his

full duty under a contract of doubtful meaning must act at his peril and expose himself to be mulcted in damages to find out its true meaning, and that the public should be put to the expense of a trial on damages in place of a suit to obtain a declaratory judgment of the rights of the parties.

The Judicature Commission called attention to the fact that this criticism had been met in other jurisdictions by procedure for obtaining what is called a "declaratory judgment" (see Jud. Com. Report, pages 113–115), by which the court makes a binding declaration of the rights of the parties without awarding damages or giving other relief. There is nothing new about the idea. Such procedure has existed in Scotland for about three hundred years and for fifty or more years in England where it has been very effectively used. More recently it has been widely discussed in this country and adopted in one form or another in a number of States. Such an act is now pending before Congress.

We long ago adopted in Massachusetts the principle upon which declaratory judgments are based, for certain specific purposes. Bills for instructions by trustees and other fiduciaries, some of which resemble declaratory proceedings, have long been within the equity jurisdiction of the courts. (See Chief Justice Shaw's opinion in Treadwell *v.* Cordis, 5 Gray, 341, at 348, in 1855, and Aldrich, "Equity Pleadings and Practice," 92.) Petitions to determine the validity of incumbrances on land were provided for by St. 1889, c. 442 (now G. L., c. 240, §§ 11–14). Petitions to determine whether equitable restrictions are enforceable were provided for by St. 1915, c. 112 (now G. L., c. 240, §§ 16–18). Petitions to establish powers under written instruments were provided for by St. 1906, c. 344 (now G. L., c. 240, § 27). All of these proceedings are in substance proceedings to obtain declaratory judgments. As the Judicature Commission said, "We believe the time has come when this form of proceeding may be extended, to the great benefit of the community." That recommendation was made almost five years ago. The Council sees no reason why Massachusetts should wait longer before taking this step. It is one way of avoiding "the law's delay" in cases to which it is adapted, as shown by Professor Sunderland's account in Appendix A, page 82.

Turning now to the question of the form of legislation needed, the English practice has been developed under a rule of four lines, "R. S. C. Order XXV, Rule 5," as follows:

> No action or proceeding shall be open to objection, on the ground that a merely declaratory judgment or order is sought thereby and the court may make binding declarations of right whether any consequential relief is or could be claimed or not.

The Conference of Commissioners on Uniform State Laws has presented a draft act of sixteen sections which was printed as Document H. 109 of 1925, and copies of which were submitted to the Council by the Massachusetts Commissioners.

If the English courts have been able to administer fairly a rule of four lines for more than fifty years since it was adopted in 1883, the Council sees no reason why Massachusetts needs a statute as long as the so-called Uniform Act. The Council believes attempts to make court procedure uniform in all the States to be a mistaken one which is likely to obstruct progress. Court procedure seems to us peculiarly one for local experiments in convenience and effectiveness.

Another shorter draft was submitted by the Judicature Commission in 1920–21. (See Report, p. 154.) Two different comments were made on this draft, — one by some representatives of the bar that it was too broad (see *Massachusetts Law Quarterly*, February, 1923, pp. 61–64), and the other by Professor Borchard, one of the leading authorities on the subject in the country, that it was too narrow (see *Harvard Law Review* for May, 1921, p. 700). The comment that it was too broad was accompanied by the suggestion that the plan should be modified by requiring the consent of both parties or by requiring leave of court before beginning declaratory proceedings. These suggestions seem to us overcautious.

Under these circumstances, we believe it to be the wisest course to follow the exact language of the English rule above quoted, and we submit draft of a statute for that purpose in Appendix C, page 142. This course has the advantage of avoiding experiments with new language and of placing behind the proposed Massachusetts statute the gradual development of this jurisdiction by the English courts for a long period of

years. As already suggested, if the English courts have been able to administer a rule of four lines in such a way as to make the proceeding of practical value to the community, we believe the Massachusetts courts can do the same thing without doing anybody any harm. The shorter the statute, the better. The Supreme Judicial Court can be relied on not to take on the burden of deciding moot questions.

We believe that the court under such an act can gradually develop the practice in the light of the judicial experience of the past and the practical needs of the future, and by rule or practice can protect itself from being burdened with cases in which a declaration of right or duty will not materially promote either the public or private interests involved. We believe the act if adopted would be a step forward, and submit it in Appendix C, page 142.

Judicial Notice of the Law of Other States and Countries.

We believe that the Massachusetts rule on this subject should be changed. There are certain cases, and they are not uncommon, in which the rights of the parties are governed by the law of some other State or country so that it is necessary to ascertain what that law is and apply it in the courts of Massachusetts. This situation frequently arises in commercial cases, and always in actions of tort for injuries suffered outside Massachusetts.

The present rule is that except in cases where the foreign law is contained in a statute or a plain decision of the foreign court, it must be left to the jury to determine what the law is; and our statutes contain provisions with respect to the kinds of evidence which may be received.[1]

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[1] As to the laws of other States and countries, G. L., c. 233, §§ 70 to 72 provide:

"SEC. 70. Printed copies of the statute laws of any other state or territory or of the United States or of a foreign country, which purport to be published under the authority of their respective governments, or which are commonly admitted and read as evidence in their courts, shall be admitted in this commonwealth, in all courts of law and on all occasions, as prima facie evidence of such laws.

"SEC. 71. The unwritten or common law of any other of the United States or of the territories thereof may be proved as facts by parol evidence; and the books of reports of cases adjudged in their courts may also be admitted as evidence of such law.

The rule applicable to such cases is thus stated in Electric Welding Company *v.* Prince, 200 Mass., at p. 390:

> If the law is found in a single statute or in a single decision, the construction of it, like that of any other writing, is a question of law for the court. As was said in Wylie *v.* Cotter, 170 Mass. 356, 357: "The law of another State is a fact to be proved, like any other fact, by evidence. Where the evidence is a single statute or a decision of a court, the language of which is not in dispute, the interpretation of it presents a question of law for the court; but where the law is to be determined by considering numerous decisions which may be more or less conflicting, or which bear upon the subject only collaterally, or by way of analogy, and where inferences may be drawn from them, the question to be determined is one of fact, and not of law." Questions of the latter kind must be decided by the jury and not by the judge.

To laymen serving on juries it may well seem strange indeed that where the foreign law is easily to be ascertained it may be a question for the judge, but that where it must be determined from "numerous decisions which may be more or less conflicting" or from the testimony of experts it is for the jury to solve the difficulties rather than for the judge who is trained to deal with just such problems.

An extended note in 34 American Law Reports, Annotated, 1447, shows what courts in different States have said about this subject, and contains the following comment on the Massachusetts rule:

> It is open to the serious objection on the practical side that the very situation or condition which calls most loudly for the trained judicial mind is that which makes it necessary to refer the question to the

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"SEC. 72. The existence, tenor or effect of all foreign laws may be proved as facts by parol evidence; but if it appears that they are contained in a written statute or code, the court may in its discretion reject any evidence of such law which is not accompanied by a copy thereof."

These three sections have been on the books since the Revised Statutes of 1836 (see R. S., c. 94, §§ 59–61). They were first drawn by the commissioners who prepared that revision as sections 48, 49 and 50 of the chapter numbered 94 of their report. They explained their draft by the following note:

"The provisions in these three sections are new in terms though corresponding substantially with the law as generally understood. It seems important to have the rules on this subject well settled and defined, particularly as to the laws of the sister states which frequently come in question here. Those sections will at least serve to present the subject to the consideration of the legislature and they will adopt any other regulations that may appear better adapted to the purpose than those here proposed." (Report of Commissioners, pp. 108–109.)

jury. . . . Under the Massachusetts rule it may be necessary to submit to the jury a question as to the law of another State which, if it had arisen in the other State, would concededly have been a question for the court, and notwithstanding that a precisely similar question as to domestic law would also have been for the court.

In some of our States, as well as in England, questions of foreign law are now left to the determination of the judge.

As early as 1840 the old rule was changed in Connecticut by legislation.[1]

There is a similar statute in New Jersey.[2]

In some States, as in New Hampshire, the result appears to have been largely accomplished by the court itself. (See note in 34 Am. Law Rep. Annotated, 1447, referred to.)

As is well known, the Federal courts take judicial notice not only of the statutes of all the States but of all the published decisions of the courts. See Nashua Savings Bank *v.* Anglo American Company, 189 U. S., at p. 228.

The English statute on the subject will be found at the end of Mr. Dodge's report in Appendix A, page 79.

The late James B. Thayer pointed out that when what was wanted was "the rule or law of the case" the same sort of question is presented whether the law be domestic or foreign, and that the question should in all cases be answered by the judge. Preliminary Treatise on Evidence, pp. 257–258.

Dean Wigmore supports these views. Wigmore on Evidence, Vol. IV, §§ 2549, 2558.

We believe that the rule that foreign law is to be determined by the jury is archaic and entirely at variance with enlightened views as to the respective functions of judge and jury.

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[1] Sections 5726 and 5727 of the Connecticut General Statutes, Revision of 1918:

"SEC. 5726. *Printed Statutes of Other States.* The public statutes of the several states and territories in the United States as printed by authority of the state or territory exacting the same and the private or special acts of this state shall be legal evidence and the courts shall take judicial notice of them.

"SEC. 5727. *Reports of Judicial Discussions of Other States.* The reports of the judicial decisions of other states and countries may be judicially noticed by the courts of this state as evidence of the common law of such states or countries and of the judicial construction of the statutes or other laws thereof." (*Cf.* Hale *v.* N. J. Steam Nav. Co., 15 Conn. 549 (1843), Lockwood *v.* Crawford, 18 Conn. 361 (1847).)

[2] A similar act appears in the New Jersey Compiled Statutes, vol. 2, p. 2228.

We believe that the Massachusetts rule should be changed by statute, and that the ascertainment of the law of another State or country should always be left to the judge as a matter of which he shall take judicial notice. We submit, in Appendix C, page 143, a draft of a statute on this subject.

Rule-making Power of the Superior Court in Suits in Equity.

The Judicial Council thinks it of great importance that the Superior Court be given the right and power to make the rules which are to govern the procedure, process and practice in equity causes in that court.

The Superior Court today is the great trial court in equity as well as at law. The different steps taken by which this condition was reached have been stated already in this report. (See pages 10 and 11.) The volume of this litigation in suits in equity is very large. At the beginning of the year ending June 30, 1924, the number of suits in equity pending in the Superior Court was 9,185.

The number of new suits entered during that year was 3,230.

The number untried at the end of the year was 10,704.

But the condition which the Superior Court has to face is not merely the number of suits in equity which it has to administer. The condition it has to face is dealing with this great volume of litigation in equity as part of the still greater volume of litigation civil and criminal pending in that court.

The number of cases civil and criminal pending in the Superior Court at the beginning of the year ending June 30, 1924, was 64,057.

The number tried was 7,633.

The number untried at the end of the year was 63,499.

The responsibility of conducting this great volume of litigation and the whole of it, including suits in equity, is on the Superior Court. There is no reason why it should not have the power of making such rules for the conduct of it and the whole of it as it finds to be necessary and expedient. No court other than the Superior Court, and no body of persons other than the justices of that court, can know and appreciate what is needed for that end.

In 1883, when (by St. 1883, c. 223) jurisdiction in equity was first given to the Superior Court, the justices of that court were, as a rule, common law lawyers. It was for that reason without question that provision was made in section 3 of St. 1883, chapter 223, that the "Proceedings, processes, and practice in such cases shall conform, as nearly as may be, to those of the Supreme Judicial Court, and the general rules for the time being of the Supreme Judicial Court for the regulation of practice in equity shall, except as herein otherwise provided, be rules of the Superior Court in the exercise of its equity jurisdiction, as far as those rules are applicable." That provision is now in force. G. L., c. 214, § 6.

But the conditions of 1883 are not the conditions which exist today. The justices of the Superior Court have been administering equity for forty-two years and are today administering a greater volume of equitable litigation than has ever been administered by any court in Massachusetts. The justices of that court know, as the justices of the Supreme Judicial Court cannot know, what is needed here and there for the proper conduct of the great volume of equitable litigation in the Superior Court, and for the conduct of the jurisdiction in equity as part of the whole volume of litigation which has to be administered by that court. As matter of course, in making the rules in equity which are to govern the practice in the Superior Court (as well as in their own court) the justices of the Supreme Judicial Court confer with the justices of the Superior Court. But the courtesy of being consulted is not the power to act. The Supreme Judicial Court, on being informed of conditions in the Superior Court, cannot appreciate to the full what is needed there, quite apart from the fact that conditions there will change from time to time and new rules ought to be made to meet them. It is not only an act of fairness, but it is an act of wisdom to give to the Superior Court, which has the responsibility, the power to act.

The Judicial Council is of opinion that G. L., c. 214, § 6, should be amended by striking out the whole of it and substituting for it the following:

Procedure, process, and practice in equity causes, originating in the superior court or transferred thereto from any other court, shall while in the superior court be regulated by rules made from time to time by that court.

An act for this purpose will be found in Appendix C, page 143.

Discovery and Interrogatories.

The right to discovery from an adverse party serves a purpose today quite different from that for which it was originally given. It was originally given because of the rule disqualifying as witnesses persons who had a pecuniary interest in the cause. By reason of this rule, facts known only by and documents in the possession of adverse parties could not be procured and put in evidence. When the law as to the qualification of witnesses was changed and persons were made competent witnesses, although they had a pecuniary interest in the litigation the right to discovery was not discontinued. Under the changed conditions it is still in force, but it is used today to get proof of a fact or document at a minimum of expense and as part of the machinery available for reducing the cause before trial to the matter or matters which are really in controversy between the parties.

This is recognized in the provisions of the Rules of the Supreme Court in England. In England no discovery can be had except on leave given to file interrogatories and to file the particular interrogatories which have been approved. R. S. C. Order XXXI., Rules 1 and 2. The provision there made is that "Leave shall be given as to such only of the interrogatories as shall be considered necessary either for disposing fairly of the cause or matter or for saving costs." This principle or test on which leave to file interrogatories is to be given or denied in England is an accurate statement of the purposes for which discovery and the right to file interrogatories is now used. But it is not possible to adopt it here unless the right to discovery and the particular interrogatories to be filed are made subject in the first instance to the approval of the court. To do that in Massachusetts would, in the opinion of the Council, add to the burdens of the court in this connection;

and the burdens of the court in connection with discovery are today greater than they should be. It is the practice today of some members of the Bar to file an unconscionable number of interrogatories in the first instance, in order to forestall evasive answers, and to avoid having to go to the court for leave to file supplementary interrogatories.[1] As many as 200 to 300 interrogatories are not uncommon, and in one instance 2,258 interrogatories have been filed in the first instance. Of course, as a rule defendants object to answering so great a number of interrogatories, and the result is that in such instances the court has to hear a motion to compel answers and to wade through the unconscionable number of interrogatories that have been filed. Under G. L., c. 231, § 61, the court cannot refuse to compel answers to interrogatories filed unless it is apparent that the facts or documents sought to be obtained do not come within the provision of the statute which confines the interrogating party to a right to "interrogate an adverse party for the discovery of facts and documents admissible in evidence at the trial of the case." Cutter *v.* Cooper, 234 Mass. 307.

It is probably the fact that when an unconscionable number of interrogatories are filed the burden on the court in the end is greater than it would be if the English rule were adopted and no interrogatories could be filed without leave of court. But as a rule, an unconscionable number of interrogatories are not filed, and when the number filed is not excessive the burden upon the court is less than it would be under the English rule.

In England the question of leave to file interrogatories is dealt with, as a rule, by masters or district registrars and not by a judge. In the absence of the practice of sending each case to a master or registrar to hear and decide all matters preliminary to trial, or some equivalent practice, it does not seem to be wise to adopt the English rule. But the Council is of opinion that the burden upon the court in the matter of discovery can be, and ought to be, lessened. We think the court should be given the power to limit the number of interrogatories which can be filed as of right. If (1) the burden were put on the interrogating party to show that the facts or

[1] Since G. L., c. 231, § 63, was amended by St. 1922, c. 314, no supplementary interrogatories can be filed without leave of court.

documents sought to be obtained will be manifestly admissible at the trial of the case; and (2) if in deciding a motion for leave to file supplementary interrogatories or to compel answers to interrogatories filed the justice were allowed and directed to take into account any offer which might be made by the parties sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to any matter in question; and (3) if to these a provision were added penalizing a party whose conduct in the premises was vexatious, the burden upon the court in the matter of discovery and interrogatories would, in the opinion of the Council, be lessened materially.

An act to carry these suggestions into effect will be found in Appendix C, page 143, and the Council recommends that it be adopted.

Notice to Admit Facts and Documents.

The practice of giving notice to the adverse party to admit facts and documents is a measure of importance under the English system in enabling parties to reduce the case before trial to the matters really in controversy between them; it is set forth in R. S. C. Order XXXII, Rules 2 and 4. These two English rules are set forth below.[1] This practice is provided for in Massachusetts by G. L., c. 231, § 69, and Common Law Rule 37 of the Superior Court. But as no penalty is provided in either the statute or the rule, in case the admission is not made when there are no real grounds for contesting the facts or the documents, the statute and the rule are not as helpful as they should be. An act to make our statute more effective is printed in Appendix C, page 144.

[1] ORDER XXXII, RULE 2. "Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the cause or matter may be, unless at the trial or hearing the court or a judge shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense."

RULE 4. "Any party may, by notice in writing, at any time not later than nine days before the day for which notice of trial has been given, call on any other party to admit, for the purposes of the cause, matter, or issue only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time

Bills of Exceptions in Suits in Equity.

It has been repeatedly said that "the proper and preferable way to bring to the full court alleged errors in equity causes is by appeal." See Zoe *v.* Loomis, 246 Mass. 366, 369. And the suggestion has been made that bills of exceptions should be abolished in suits in equity.

In the opinion of the Council bills of exceptions serve or may serve a useful purpose in some equitable suits and ought to be retained.

G. L., c. 214, § 25, in effect abolishes bills of exceptions when a suit in equity goes to the full court "upon an appeal . . . in which the evidence is reported." But there are instances in which a party to a suit in equity wishes to take the opinion of the full court upon a single ruling of law. In such a case he is not put to the expense of printing the record and the evidence if he is allowed to take to the full court the correctness of the single ruling by way of a bill of exceptions. If, however, bills of exceptions in suits in equity involved the possibility of the case going to the full court more than once they ought not, in the opinion of the Council, be retained. But that can be avoided. It would be avoided if it were provided by statute that the pendency of exceptions in suits in equity should not prevent the entry of a final decree, and that the execution of the decree should be stayed until the exceptions were disposed of. If after the enactment of such a statute a party to a suit in equity wished to go to the full court on the terms of the decree as well as on the single ruling presented by his bill of exceptions, he could appeal from the decree or go up on a second bill of exceptions attacking the terms of the decree. The appeal and the original bill of exceptions or the two bills

as may be allowed by the court or a judge, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the cause, matter, or issue may be, unless at the trial or hearing the court or a judge certify that the refusal to admit was reasonable, or unless the court or a judge shall at any time otherwise order or direct. Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular cause, matter, or issue, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice; provided also, that the court or a judge may at any time allow any party to amend or withdraw any admission so made on such terms as may be just."

of exceptions could be heard by the full court at the same time and the suit finally disposed of then.

An act to carry this suggestion into effect will be found in Appendix C, page 145.

THE DISTRICT COURTS.

History and Recent Development.

The Judicature Commission in its final report (House No. 1205, 1923, page 33) said: —

> There is a constantly growing emphasis on the importance of developing and improving the standard, the powers and the procedure in the district courts, and the recognition of their importance by the bar, by the public and by the appointing power. The reason for this increasing emphasis is the fact that these courts deal directly with more people in the community than any other courts, and consequently the ideas in regard to the system of administering justice in the minds of very many of our citizens and of the immigrant population in the community depend on the picture presented to them of the administration of justice through their practical experience and observation in the only courts within their knowledge.

From the early days of the Commonwealth justices of the peace had and exercised a very limited civil and criminal jurisdiction, with the result that nearly every village had its local justice. As the population increased and the village merged into the town or city this jurisdiction was taken over by the establishment of police and municipal courts with an increased jurisdiction, but these practically remained local and isolated institutions; as the population and towns and cities grew and increased, their jurisdiction increased, and more of such courts were established as occasion seemed to require, until today there are seventy-three district courts in the State; this includes the Municipal Court of the City of Boston. These courts, however, continued to be local and isolated, a condition which the justices themselves recognized and they formed a voluntary association for the purposes of mutual benefit and the discussion of practice and procedure.

The jurisdiction has been enlarged from time to time until now they have jurisdiction of all misdemeanors, and felonies

where the penalty does not exceed five years in the State Prison on the criminal side, and where the debt or damage demanded does not exceed $3,000 on the civil side; in the Boston court this is $5,000.

In 1912 (chapter 649) the experiment of doing away with the double trials of facts in civil cases was tried in the Municipal Court of the City of Boston by the establishment of an appellate division; this worked so well that it was applied to all the district courts in 1922 (chapter 532), and by the same act an administrative committee appointed from the district court justices by the Chief Justice of the Supreme Judicial Court was constituted. This committee was charged with the duty of promoting co-ordination in the work of the courts; it has visited each court and ascertained its environment; it now holds regional conferences throughout the State, and has emphasized the idea that the district courts are a part of the judicial system of the State and should function accordingly. In its last report to the Chief Justice it is stated "of ourselves we could not have broken down the isolation of years — only the desire of each judge to learn and follow the best in method and procedure could have accomplished what seemed at first impossible. Today we are happy to report that there are no longer seventy-two district courts in Massachusetts but the 'District Court of Massachusetts.'"

The administrative committee has prepared statistics covering a period of eight years showing the increase and growth of business in these courts; last year's report (see Appendix B, facing page 134) gives the total number of civil entries as 36,423, and criminal cases, 324,987; last year these courts made 2,928 insane commitments and held 827 inquests. These figures do not include the Municipal Court of the City of Boston. Some statistics of the work of that court for the year 1924 are also printed in Appendix B, pages 130 to 134.

The importance of the district courts and the magnitude of their work is therefore manifest and emphasizes the statement of the Judicature Commission, above quoted.

Jurisdictional Limits of the District Courts in Civil Cases.

The Legislature, by chapter 27 of the Resolves of 1925, requested a report on this subject.

For many years the civil jurisdiction of the district courts generally was limited to cases involving not more than $1,000, and in the Municipal Court of the City of Boston, $2,000. In 1922, by chapter 532, the jurisdiction of all these courts was raised to $3,000, and in 1924, by chapter 57, the Boston Municipal Court was raised to $5,000. These changes followed the recommendations of the Judicature Commission, which gave its reasons as follows:

These arbitrary limits, while they were reasonable enough as practical experiments in the earlier development of the courts, seem to serve no useful purpose to-day, and cause unnecessary congestion and delay in various ways.

We believe the sounder plan is to allow a plaintiff to bring a suit for whatever amount he chooses in the court before which he is satisfied to have it heard, and to give the defendant an opportunity of removing the case to the Superior Court if it exceeds the present jurisdictional limits of the district courts, if he is not satisfied that it should be heard in the district court. Under this plan both parties could avail themselves of the courts in which both the cost and the necessary delay in disposing of the case are less. Neither party would be forced into the district court, if he wished to remove his case and comply with reasonable regulations in regard to the matter, and the public would gain whenever the district courts would be to that extent relieved of an undue accumulation of business. . . .

As pointed out by Chief Justice Bolster in an address before the Massachusetts Bar Association in 1915, discussion usually centers about cases which are tried, and we forget the large number of cases that never come to trial, but which are disposed of with greater or less expense, according to the rules provided for such disposal. One of these rules, which seems too expensive for the public, is the arbitrary jurisdictional limit in these civil cases.

In the address above referred to, Chief Justice Bolster said, referring to conditions in 1915 in the Boston court:

The municipal court tries only one in eight of its entries, the Superior Court scarcely more than one in six of its civil law entries. The large bulk of the entries in both courts are cases brought not for the determination of disputed rights, but for the enforcement of known rights. The proper handling of such cases in the courts is just as important to community well-being as the correct trial of causes. When you come to deal with large numbers of these cases, in thousands, putting

little tax upon the judicial, but much upon the clerical, force, it seems to me the public has a right to say that those cases shall be handled in a court which can handle them with as little public cost as possible, consistently with the safety of litigants.

The relative number of removals from the Boston Court of cases within its increased jurisdiction appears in Appendix B, pages 129 and 131.

The only problem which arises in connection with this plan relates to the conditions on which a defendant may remove a case to the Superior Court. It is a fact of common knowledge that opportunities for delay are, and will be, taken advantage of by many defendants.

The practical problem is as follows: the Constitution gives each party in a civil case a right to a trial by jury if he wants it, provided (and this is sometimes forgotten) there is a disputed issue of fact for a jury to decide. If there is no dispute about the facts, of course, there is no right to a jury trial, for no man has a constitutional right to a trial by jury for the deliberate purpose of trying to deceive the jury or the court. A jury trial is the most expensive form of trial for the public for the obvious reasons, not only that it takes longer to try a case to a judge and twelve jurors than to a judge alone, but that every jury trial at $6 a day for each juror costs daily $72 and their travelling expenses besides the increased cost of court attendants, judges and clerks, time, heat, care of plant, and other business costs. If a party to a suit really wants a jury trial on an honestly disputed question of fact, he has a right to it, and no one would question the cost; but, with the increased expense of everything connected with a jury trial, and the waste of time of the parties and witnesses and everybody concerned, the real thing desired, in many cases which are removed, is *not* a *jury trial* but the *delay* incident to a removal, and *claim* of jury trial. To check this kind of removal, the Legislature has required a removal bond of $100 to cover costs similar to the appeal bond which was required for the same reason under the earlier system.

All this applies to cases involving $3,000 or less, and in the Boston court, $5,000 or less. If the Legislature should decide to try the experiment of removing all jurisdictional limits and of allowing a plaintiff to bring suit in the district courts for

any amount, the question would arise whether different terms of removal by defendants should be made in cases larger in amount than those just mentioned. Besides the bond now required, as above stated, an affidavit of defendant's counsel of record "that in his opinion there is an issue of fact requiring trial" and "that such trial is in good faith intended" is required. See G. L., c. 231, § 104; St. 1922, c. 532; St. 1925, c. 132. While this requirement doubtless prevents some removals by conscientious members of the bar, the inference is strong that many regard it as a formal perfunctory requirement like a great many other perfunctory affidavits which are required of people for all kinds of purposes, and do not take it as involving serious responsibility on their part.

Bearing this in mind, if a plaintiff is allowed to bring a suit in the district court, when he wishes to, for $10,000 or $50,000 or $500,000, should we make it a condition of removal that defendant's counsel shall make affidavit that there is an issue of fact which he wishes and intends in good faith to try before a jury in the Superior Court?

We do not advise this. We think it would meet with opposition on reasonable grounds. As already pointed out, there are 73 different courts with about 200 district judges when the special justices are counted in. Naturally the judges vary in ability and experience. While difficult questions of law and fact may arise in any case regardless of the amount involved, such questions are more apt to be brought out in the larger cases. While there are a number of justices and special justices in the district courts, in whom the bar generally would have confidence in dealing with large cases, as shown by the fact that it is not uncommon to select them as auditors or masters, yet there are many cases in which the bar may reasonably prefer the judgment of a Superior Court judge on the law and facts even though no jury trial is desired. In this respect the situation resembles closely that which existed as to the Superior Court in 1883 when equity jurisdiction was first given to it. The act conferring equity jurisdiction contained a provision for removal to the Supreme Judicial Court which is still in force (though seldom used) as G. L., c. 214, § 32.

There was no right to jury trial in equity so *that* opportunity and inducement to remove a case *for delay* was not present in equity cases, and accordingly no removal bond was required.

This provision for equity cases suggests the solution of the problem under discussion. We believe a removal bond should be required in *all* cases of removal from district courts to check abuse of the process for delay, but we do not think removals of these larger cases should be limited to cases in which a jury trial is claimed. We think that a certificate or statement by defendant's counsel, that there is a real issue involved which he intends to bring to a hearing, is a reasonable requirement. We do not advise an affidavit because we believe the requirement of oaths is carried to excess and encourages perfunctory swearing. The attorney's oath, on admission that he "will delay no man for lucre" and "will conduct" himself "in the office of an attorney within the courts . . . with all good fidelity as well to the courts as" to his "clients," places upon the attorney the responsibility for professional conduct, and the more this is emphasized and the practice adapted to it, the more support will be given to a reliable professional spirit among lawyers.

Accordingly, we recommend the repeal of the present pecuniary jurisdictional limits of the district courts so as to allow suits of any amount, but with the unrestricted right of removal to the Superior Court by the defendant in cases in which more is demanded than $5,000 in the Boston court and more than $3,000 in other district courts, on the conditions specified in the draft act submitted herewith in Appendix C, page 145.

Inquests.

The holding of 827 inquests presents a financial and economic problem. Under the statutes inquests *must* be held by these courts in all cases of death upon steam railroads, street railways and fatal automobile accidents. There is a duplication and often triplication of expense, time and the attendance of witnesses. The inspectors of the Departments of Public Utilities or of Public Works are required by law to investigate each death and make report thereof to their respective departments. The several police departments investigate the cases where

there may be criminal liability. The medical examiners must also investigate these cases and every case of death by violence and make report to the district court having jurisdiction in the premises, and then the court must hold an inquest; the Departments of Public Utilities or of Public Works must be notified of the time and place of holding the inquest and may send their representatives to attend; often the medical examiners' report is not made until after criminal proceedings have been instituted and concluded. A brief history of inquests in Massachusetts is given in a footnote.[1]

The primary object of an inquest is to ascertain the facts to decide the question of whether or not criminal proceedings shall be instituted against the person or persons responsible for the death. Upon this has been engrafted the inquiry as to deaths by accident on railroads and railways and the furnishing of verbatim reports of the evidence, and deaths in which motor vehicles are involved.

This seems to be an entirely unnecessary procedure, for by G. L., c. 159, § 29, an inspector shall, under the direction of

[1] Inquests are a part of the criminal law relating to deaths by violence, and formerly the magistrate who officiated in such cases was called the coroner, with a jury of six to help him. This came to us from the English common law, 1 Black. Com. 346-349.

By Rev. Sts. (1836), c. 140, § 1, "Coroners shall take inquests upon the view of dead bodies of such persons only as shall be supposed to have come to their death by violence." By St. 1849, c. 172, it was made the duty of coroners to take an inquest upon the view of the dead body or bodies of such persons as shall have come to their death upon railroads. By St. 1859, c. 215, "No coroners inquest or fire inquest shall be held unless the coroner or justice shall be first authorized in writing to hold the same, either by the attorney general of the commonwealth, the attorney of the district, the mayor or chief of police of the city or the selectmen of the town in which the fire shall occur or a dead body be found, and such written authority shall be annexed to the return in the case."

St. 1877, c. 200, abolished the office of coroner, and the appointment of medical examiners was authorized and the law relating to inquests revised; by section 10 of this act inquests were required to be held in all cases of death caused by violence and deaths by accident upon railroads and railways.

By St. 1888, c. 365, a verbatim report of the evidence given at the inquests on the death by accidents upon railroads was required and a copy sent to the Board of Railroad Commissioners, at the ultimate expense of the railroad upon which the accident happened; by St. 1889, c. 154, this was made applicable to street railways.

By St. 1918, c. 257, § 147, an inquest must be held in all cases of death in which a motor vehicle is involved, and the Highway Commission be notified, but no provision for a verbatim report of the evidence is made.

The general provisions relating to inquests are now to be found in G. L., c. 38, § 38, *et seq.*

the Department of Public Utilities, investigate any accident upon a railroad or railway and report to the Department; the inspector must attend the inquest and may cause witnesses to attend. An inquest, therefore, largely duplicates work already done. Further, it is almost universally true in cases of death by violence or negligence that the persons responsible for the death have already been arrested or proceeded against before the medical examiner's report is made notifying the court of the result of his examination, or autopsy if one is made.

Unnecessary inquests ought not be held to the great inconvenience of witnesses and at the expense of the Commonwealth, or of the railroads and railways, especially where persons responsible for the death have already been proceeded against.

Inquests should be held at the discretion of the court, and mandatory only when requested by the attorney general or district attorney of the district.

This is the judgment of the administrative committee and the consensus of opinion of the justices of the district courts. A bill to that end is appended in Appendix C, page 146.

Special Justices.

The larger district courts are confronted with a serious problem. The work has so increased in them that the justice can no longer personally attend to all the business and has to call in his special justices for assistance. This service is so interfering with the private practice of the special justices that a number have already resigned and others have indicated that they will do so. The special justices of these courts must be men of ability and integrity and well grounded in the law. This means that they must be practicing lawyers, and it often happens that their services are not available when needed. The appointment of a third special justice would afford some relief and would not entail any additional expense, as they are only paid when actually rendering service.

By St. 1925, c. 88, a third special justice was provided for the Springfield court, making four such courts with three special justices; the other three are the courts in Worcester (St. 1909, c. 219, § 2), Lynn (St. 1911, c. 473), and Lawrence (St. 1924,

c. 229, § 2). According to the 1920 census the Worcester court serves a population of 210,561, Springfield, 161,144, Lynn, 126,765, and Lawrence, 123,992. Between the first two and the last two there are seven districts with large populations, namely, Malden, 159,490, Roxbury, 154,487, New Bedford, 142,723, Cambridge, 139,108, Dorchester, 138,671, Lowell, 133,214 and Fall River, 130,986. The statistics show that each of the courts in these seven districts is having a larger amount of business which is constantly increasing. The appointment of a third special justice in each of the above seven courts is well warranted. Rather than piecemeal legislation authorizing the same, it is recommended that all district courts serving a population of over 100,000 be provided with a third special justice. A bill to this end is printed in Appendix C, page 147.

SUGGESTIONS TO THE COURTS.

The act creating the Judicial Council provides: "Said council may also from time to time submit for the consideration of the justices of the various courts such suggestions in regard to rules of practice and procedure as it may deem advisable."

Suggestions to the Supreme Judicial Court.

Acting under this provision of St. 1924, c. 244, § 34B, the Council has made the following suggestions to the justices of the Supreme Judicial Court in connection with the adoption by them of new Equity Rules:

Exceptions to Masters' Reports.

I. The adoption of the following Rule in Equity to take the place of the present Rules XXXI and XXXII. The council has been notified that this suggestion has been adopted by the justices and will be embodied in the revision:

When the Master has prepared a draft copy of his report he shall notify the parties or counsel of a time and place when and where they may attend and suggest such alterations as they may think proper; upon consideration whereof, the Master will finally settle the draft of his report, and give notice thereof to the parties or counsel, furnishing them with copies of the report; whereupon five days shall be allowed for

bringing in written objections thereto, briefly and clearly specifying the matters objected to and the cause thereof, which objections shall be appended to the report. Upon the filing of the report in court a party whose objections are appended thereto shall be deemed to have excepted to the report for the reasons set forth in the objections, and no additional exceptions may be filed without a special order of the court.

Cross Bills.

II. The addition of the following to the present Rule VII. The justices have this under consideration.

Whenever a cross bill might be filed by a defendant against the plaintiff to obtain relief touching any matter in question in the case the defendant may instead of filing a cross bill obtain the same relief by setting up in his answer the facts upon which he relies and inserting an appropriate prayer or prayers for relief. If such matter be contained in the answer the plaintiff shall file a reply thereto within ten days after the filing of the answer.

Hearings by Masters.

III. The adoption of the Equity Rule set forth below to take the place of the present Equity Rule XXX as to hearings before masters. The justices have this under consideration.[1]

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[1] Suggested New Equity Rule in Place of Present Equity Rule XXX.

In all cases referred to masters, except as hereinafter provided, hearings once begun shall proceed as nearly as possible on consecutive days. Engagements in actual hearing before a master shall have the standing of an engagement in actual trial before the court. No other protective order for counsel or master shall be made.

The master shall have power to determine the days on which hearings shall be held, but no adjournment, except by consent of the parties, shall be for a longer period than fourteen days. The court may at any time make appropriate orders to prevent delay in the completion of the hearings.

If one of the parties fails to appear at the time set for hearing before the master, or to show good cause for not appearing, the master shall proceed *ex parte* on motion of the party appearing. If neither party attends the master shall so report to the court and the reference may be discharged or such other order or decree made as justice requires. In such order terms may be imposed by the court.

The clerk shall keep a docket upon which shall be entered every case referred to a master. On the first Mondays of January, April, July and October it shall be the duty of every master before whom a case is pending to file in court a report of the proceedings had in the case in question during the preceding three months and the status of the case at the time of the filing of the report.

A justice designated by the chief justice for the purpose shall examine said docket in such counties and at such times as the chief justice deems advisable and cause to be made up by the clerk a list of such cases on said docket in which due progress would seem not to have been made. Upon the completion of

Something ought to be said as to the Massachusetts practice of sending suits in equity to special masters to find and report the facts on the issues raised by the pleadings.

Outside of Massachusetts suits in equity are sent to special masters (or similar officers) only when the issues raised by the pleadings or some of them are of such a character that they can be more conveniently and better tried by the master (or similar officer) than by the court.

The practice in Massachusetts is different. In Massachusetts suits are sent to masters to help the court dispose of its equity docket. The rule to the master in such cases is usually in these terms: To hear the parties and find and report to the court the facts in the case with such portions of the evi-

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said list a call of the docket of the cases on it shall be had by said justice if he deems it advisable, at which the master and counsel in all said cases shall attend. At such call of said docket the single justice may make any order deemed proper to promote justice and prevent delay, including the imposition of terms upon the parties or one of them, and including a direction that the case proceed on a day certain irrespective of the ability of counsel theretofore retained to proceed with the case on that day for any reason including engagements in court. For the time spent by the master in making up the reports herein required and attending the call of the docket he shall receive compensation at the usual rate.

In suits sent to a master for trial on the merits the rule to the master shall be in the following terms (unless the justice making the rule is of opinion that for a special reason or reasons stated in the order for the rule the rule should be in a different form) to wit:

> This case came on to be heard on the matter of reference to a master and thereupon, upon consideration thereof: It is ordered that the above-entitled case be referred to , Esq., as master, to hear the case upon the merits and to report to the court his findings of fact and his rulings of law including the terms of the decree which ought to be entered in the case. The master is ordered to report so much of the evidence as may be necessary to present any questions of law raised before him. But in case of a ruling on all the evidence no report of it shall be made unless the evidence has been taken by a stenographer selected or approved by the master and a fair transcript thereof has been furnished him. Hearings before the master shall begin on or before the day of , 192 . If the master is of opinion, as the hearings before him go on, that he ought, before proceeding further with the hearings, to be instructed by the court as to the issues to be heard by him or on other matters connected with further hearings in the case, he is directed to file a preliminary report or reports setting forth the matters in question and adjourn the hearings before him until an order or orders are made on them.
>
> By the Court,
> CLERK.

In suits where the issues on which the case is to be tried by the master have been framed by the court the words "upon the issues framed by the court" shall be substituted for the words "upon the merits."

dence as are necessary to understand any ruling made by the master. In other words, to try the case on its merits, reporting so much of the evidence as will enable the court to deal with a question of law dealt with by the master.

This is not a practice of recent origin. It appears from a report to the Judicial Council made at its request by the clerk of the Supreme Judicial Court for the County of Suffolk that of the 18 suits in equity in that court sent to masters in the year 1880 there were 10 which were sent to masters (in substance) to hear the parties and report the facts. The rule to the master in 5 of these 10 cases states that the case in question "with the consent of the parties" is sent to the master to hear and report to the court the facts in the case.

There are grave objections to the Massachusetts practice.

In the first place, experience shows that ordinarily a judge can hear a case in from one-half to one-quarter of the time which would be consumed by the hearing of the same case by a master even after the hearings before the master have begun, and even if the hearings before the master continue without interruption.

Further great delays often take place before the master's hearings begin. It is not too much to say that as soon as a suit is safely committed to a master the parties and their counsel ordinarily turn to more pressing matters and leave the prosecution of the suit before the master to a more convenient season. As a rule, it is not until it has become convenient for the counsel for both parties, for both parties themselves and for the witnesses of both parties that the hearings before the master begin, and once begun it is only when it is convenient for all concerned that the hearings continue to take place. Doubtless there are instances where both parties wish the hearings before the master to be taken up when convenient. In such cases there is no objection to the present practice. But it is much too common for the case to drag on merely because of excessive habits of mutual accommodation between counsel made possible by the lack of more effective relations between the special master and the court which appointed him.

Another unfortunate aspect of this practice is that suits sent to masters to help the court dispose of its equity docket

are apt to be the long suits, and it is the long suits which as a rule are the important ones. In other words, as a rule, it is the important suits which are sent to masters and the shorter and less important ones which are heard by the court.

Under the rule to the special master in the form ordinarily used (set forth above), masters, as a matter of fact, conceive it to be their duty to find the facts necessary for the disposition of the suit on any view of the law which the court may afterwards adopt as the law which governs the case. It is, of course, within the power of masters appointed under a rule in the usual terms to ask the court for instructions by way of an interlocutory report or reports if they are of opinion that the hearings before them would be shortened by directions as to the issues on which the hearings are to be held, or if for any other reason they are of opinion that the proper administration of the case requires that they should receive further directions from the court. But it is generally thought by those serving as masters that, having sent the case to a master, the court does not wish to have him put the burden of the case on them, and consequently it is not the practice of the masters (as matter of fact) to go to the court for further instructions. By reason of this understanding on the part of the masters it is not infrequently the case that hearings before the masters are greatly prolonged by the assumed necessity of finding what the facts are on several alternative views of the law which the parties contend is the law governing the case.

Another feature of this practice is that under the terms of the usual rule to the master his findings are conclusive, and, unlike the findings of a justice of the court, cannot be revised.

It is also the fact that under the terms of the usual rule to the master a party cannot raise the question whether as matter of law the evidence before the master warranted a finding against him. A hearing before a master under a rule in the form which is now ordinarily in use is the one judicial proceeding in the Commonwealth in which that question of law cannot be raised and carried to the full court.

In the present congested condition of the Superior Court docket the practice cannot be discontinued of sending suits

in equity to special masters to be heard by them on the merits to help the court dispose of its equity docket. During the year ending June 30, 1925 (the figures for the year ending June 30, 1924, have not been computed), 391 suits in equity were heard by the judges of the Superior Court and 258 were sent to masters to be heard by them. In spite of the fact that the court was thus relieved of the principal burden of about 258 suits in equity (assuming that the figures for the year ending June 30, 1924, are in substance the same as those for the year ending June 30, 1925), there were 1,519 more suits in equity pending in the Superior Court at the end of the year ending June 30, 1924, than there were at the beginning of that year. See returns under G. L., c. 221, § 24, and St. 1924, c. 131, Appendix B, page 120.

Since this practice peculiar to Massachusetts (in itself undesirable) cannot be abandoned at the present time, it was and is the opinion of the Council that it ought to be improved. As we have already said, it is shown by experience that a judge can hear a suit in equity in one-quarter to one-half the time that the same suit would consume when heard by a special master. That being so, it seems to the council wise to put hearings before masters on the basis of hearings by a judge so far as that can be done. The first thing to be done to accomplish that end is to provide that hearings before masters shall have the standing of an actual engagement in court. For that reason the Council suggests (in the draft rule submitted by them) that: "Engagements in actual hearing before a master shall have the standing of an engagement in actual trial before the court. No other protective order for counsel or master shall be made."

To further put hearings before the master on the footing of hearings by a judge the Council suggests that the justices should provide by a general rule of court that the rule sending the case to the master should direct him "to hear the case upon the merits and to report to the court his findings of fact and his rulings of law including the terms of the decree which ought to be entered in the case."

It is a common complaint that the court does not keep in touch with suits sent to a master for hearing on the issues

raised by the pleadings, and that the administration of justice would be improved if they did. Having in mind this complaint and the practice of masters to find the facts on several alternative views of the law which might be held by the court to be the law governing the case, the Council suggests that the court should provide in the rule to the master that:

> If the master is of opinion, as the hearings before him go on, that he ought, before proceeding further with the hearings, to be instructed by the court as to the issues to be heard by him or on other matters connected with further hearings in the case, he is directed to file a preliminary report or reports setting forth the matters in question and adjourn the hearings before him until an order or orders are made on them.

In addition the Council suggests that if the parties at their own expense furnish the master with a copy of the evidence they should be entitled to a ruling on the question whether as matter of law a finding was warranted by the evidence, and in this way the parties to a suit sent to a master for hearing on the issues raised by the pleadings would be enabled to take that question of law to the full court. If this were done hearings of suits in equity by masters would be put in this connection on the same footing as all other civil proceedings.

Lastly, having in mind that, in spite of the improvements which would take place if these changes were adopted, it might still turn out to be the fact that hearings before masters would not go on as fast as they ought to, the Council suggests the system consisting of a separate docket being kept for suits sent to masters, of quarterly reports by the masters of the proceedings in each suit during the preceding three months, of the making up of a list from these reports of those cases in which due progress would seem not to have been made, and of the calling of the docket of the cases on this list with power on the part of the justice at such call of the docket to "make any order deemed proper to promote justice and prevent delay, including the imposition of terms upon the parties or one of them, and including a direction that the case proceed on a day certain, irrespective of the ability of counsel theretofore retained to proceed with the case on that day for any reason including engagements in

court," all as stated in the suggested rule set forth in the note to take the place of the present Equity Rule XXX.

IV. The Council also made a suggestion to the Supreme Judicial Court as to the terms of the subpœna in equity. But as the Council has under consideration the terms of writs generally, this suggestion is not included in this report.

Suggestion to the Superior Court.

SPEEDY CAUSE LIST.

The agitation of the past year or two in favor of an extension of "commercial arbitration" which resulted in the new Massachusetts act on the subject adopted by the Legislature at the last session as St. 1925, c. 294, emphasizes the dissatisfaction of business men with the delays and what they consider unnecessarily technical rules involved in settling their disputes in court. To what extent the new arbitration act will be taken advantage of it is impossible to say, especially in view of the fact that the previous arbitration statute — G. L., c. 251, providing for agreements to arbitrate disputes after the disputes had arisen — was used very little, although it was adopted in 1786 for the purpose expressed in its title of "rendering the decision of civil causes as speedy and as little expensive as possible." See St. 1786, c. 21. However, there has been a recent revival of interest in the subject. Certain views about arbitration, held by both lawyers and laymen, which require serious attention, were expressed in the "New York Times" of February 11, 1925, in a letter from a member of some New York Committee on Law's Delay, as follows:

> Practical experience has tested its inadequacy to meet the general demands for justice. Where the dispute is in good faith, a voluntary agreement for arbitration is usually effective. But parties often, for many reasons, refuse to arbitrate. They may prefer a trained judge or jury, or they may like the thought of a probable delay to work to their benefit. Obligatory arbitration clauses are now being generally inserted in contracts, and they are being signed by interested parties who little realize their serious import. Upon a breach, the injured party, sure of his case, might prefer a trial by a judge experienced in deciding similar disputes, rather than being forced by his contract to go before arbitration, where, true, a prompt decision is rendered, but which may amount to a compromise verdict.

The writer went on to describe an experiment, tried in one of the New York courts, of providing an opportunity for a prompt trial in court, with all formalities waived, for those who preferred that method.

A similar agitation among business men to arbitrate arose in London toward the end of the nineteenth century. "Commercial men," however, "were not [all] satisfied with arbitration, for, though their trade disputes were thus speedily settled by commercial arbitrators, it was often at the expense of the legal rights of one or the other of the parties who submitted to be bound by the decision." See Encyclopedia of the Laws of England, 2d ed., Vol. III, p. 203. Some other alternative was desired. In the midst of the discussion in 1893 Mr. Justice Gorell Barnes of the Probate and Admiralty Division "gave out one day that he was ready to put causes of a commercial kind in a special list, expedite all introductory stages and abridge or wholly dispense with pleadings, if the parties would undertake not to raise merely technical points and to admit all substantially uncontested facts. . . . This . . . experiment was speedily followed by the common law judges who established the so-called 'Commercial Court' by a simple exercise of administrative discretion." See Pollock's "Genius of the Common Law," 61–62. The "Commercial Court," which is simply a separate session, has been active ever since as an alternative for those who prefer it to arbitration or the procedure in other branches of the court.

Under these circumstances we felt that a similar experiment would be worth trying in the Superior Court for those who should desire to take advantage of it. Accordingly we prepared the tentative draft of a "Standing Order" or rule which is printed below in a footnote[1] and submitted it to the Chief Justice of the Superior Court for consideration as a plan to be tried in Suffolk County if and when it could be fitted into the other work of the court.

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[1] Tentative Standing Order for a Speedy Cause List in the Superior Court in Suffolk County.

A justice will be in attendance on for the hearing of causes on a list to be known as the "Speedy Cause List." The parties to any cause at law or in equity on or after the filing of a declaration or bill and the appearance of the

While it is, perhaps, more likely to be taken advantage of in commercial cases, if the judge who is assigned for the purpose inspires the confidence of the parties in his judgment in such matters, we did not suggest that it should be confined to any special class of cases. As it would be a new experiment the list would probably not be congested at first, and there seems to be no reason why the parties in any kind of civil case should not be given the opportunity to present the case in this way if they wish. If the experiment should succeed it might save time and expense for both the parties, the court and the witnesses. The practical problem seems to be one of fitting it into the work of the Superior Court in view of all the other demands upon the judges described elsewhere in this report. No legislation is necessary, as the whole plan depends on the agreement of parties who wish to save time by waiving more formal procedure. The court now has the matter under consideration.

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defendant or defendants may have the same placed by the clerk upon the Speedy Cause List by filing an agreement in the following form signed by all the parties or their agents in fact authorized so to do.

FORM OF CONSENT.

"SUPERIOR COURT.

SUFFOLK, ss.

A. B., Plaintiff, v. C. D., Defendant.

We hereby agree that this case shall be placed upon the Speedy Cause List to be dealt with, heard, and determined under the terms of the standing order relating to said list, and for that purpose we agree to waive: first, a right to jury trial; second, filing any further pleadings; third, the rules of evidence subject to the discretion of the court; fourth, the right to file interrogatories except as allowed by the court; fifth, the right to appeal from or take exceptions to any ruling order judgment or decree except on a question of substantive law.

.....

....."

The third clause in the above agreement may be omitted or left in the agreement as the parties elect.

After the cause has been thus placed on the Speedy Cause List it shall proceed with or without further pleadings, as the court may direct, and in accordance with such directions as the court shall give from time to time for the speedy determination of the questions really in controversy between the parties. The court may, in its discretion, direct that the cause be removed from the Speedy Cause List and heard in the ordinary course, but so long as the cause is retained on the Speedy Cause List it shall be heard by the same judge before whom it was begun unless otherwise directed by special order.

MISCELLANEOUS MATTERS.

Undue Amount of Litigation and Nominal Costs.

There is more litigation in Massachusetts than there ought to be. For the population there is more than twice as much as there is in England and Wales.[1] The reason for the difference between the two jurisdictions is to be found, to a large extent, at any rate, in the matter of costs.

In England the costs which the unsuccessful party has to pay consist (in substance) in the expense he has wrongfully made the other party incur; in other words, the unsuccessful party in England has to pay his opponent's lawyer's bill as well as his own. The possibility of having to pay the lawyer's bills of both parties to the action makes a plaintiff think twice before he sues out a writ and a defendant think twice before he defends an action which ought not to be defended, and that is a direct deterrent on the number of cases put or kept in suit.

In Massachusetts costs are nominal. Where costs are nominal the plaintiff may win, but not to the full extent of his damage, while the defendant is sure to be a loser to some extent, for if he is successful in the action he has to pay his own lawyer's bill. This is a direct incentive to litigation.

The Council is of opinion that the adoption of the principle of more substantial costs would tend to diminish the amount of litigation in Massachusetts, and they know of nothing else which can be done which can so effectively bring that about.

[1] The number of new "proceedings" in the Chancery and King's Bench Divisions of the High Court for the year 1923 was 115,763. (See Civil Judicial Statistics in England and Wales, 1923, at page 4.) The number of new entries in the Superior Court in the year ending June 30, 1924, was 26,606. (See Tabular Statement of Returns made under G. L., c. 221, § 24, and St. 1924, c. 131.) The "proceedings" in the Chancery and King's Bench Division of the High Court do not include libels for divorce, while 1,412 libels for divorce are included in the 26,606 new entries in the Superior Court. But the 115,763 new "proceedings" in the Chancery Division include bills brought for the execution of trusts, a jurisdiction administered in Massachusetts in the probate courts. In addition, no account has been taken (in making this comparison of the litigation in the trial courts in England and in Massachusetts) of the litigation in the United States District Court for the District of Massachusetts. Taking the litigation in the two jurisdictions on the basis stated above, there was one new "proceeding" for 327 persons in England and Wales, and one new entry for 141 persons in Massachusetts.

There is another reason for adopting the principle of substantial costs in place of that now used in Massachusetts. That is that it does justice and the Massachusetts system does not. It is plain that the Massachusetts system does not. On what principle of justice can a plaintiff wrongfully run down on a public highway recover his doctor's bill but not his lawyer's bill? And on what principle of justice is a defendant who has been wrongfully haled into court made to pay out of his own pocket the expense of showing that he was wrongfully sued?

But the adoption of the English system of costs is attended with much difficulty.

In the first place, it is in direct conflict with Massachusetts traditions.

In the second place, though the principle of the English system of costs ought to be adopted, the system in detail would not and ought not to be made part of our jurisprudence. It is enough to read an English bill of costs to be convinced of that. Copies are printed in Appendix D, page 149.

And lastly, in devising a new system of costs there are problems which must be met; for example, the case of an impecunious person who has a meritorious claim must be taken care of by some system of allowing him to sue *in forma pauperis* and at the same time protecting him from the lawyer who makes a business of taking speculative cases.

The Council has not been able to take up this subject this year. But they are convinced that a change should be made and that a system of substantial costs should be adopted. It will be a matter for consideration in the coming year.

Congestion of the Suffolk County Court House.

During the last legislative session, the Judicial Council expressed its opinion to legislative committees before whom the subject was pending "that the present congestion in the Suffolk County Court House was an obstacle to the administration of justice and to the work of the Council in making suggestions for its improvement."

Admission to the Bar.

The Judicature Commission said in its report in 1921:

> Massachusetts cannot afford to lag behind other States in the requirements of intellectual training for the bar. The longer this step is delayed, the worse will be the conditions of practice.

The present standards of general education set by the Legislature by St. 1915, c. 249, now G. L., c. 221, § 36, are that such requirements shall not be higher than those of two years of an "evening high school or of a school of equal grade." The Judicature Commission recommended that this restriction be removed and that the matter should be left to the regulation of the justices of the Supreme Judicial Court, who should be trusted to regulate it in the interest of the public as they are trusted with their other important duties.

The Judicial Council adds its recommendation to that of the Judicature Commission, and submits an act to carry this into effect in Appendix C, page 147.

Bills of Exceptions.

There is much criticism of the present practice in preparing bills of exceptions for the presentation of cases to the full bench of the Supreme Judicial Court. In practice it frequently imposes upon the prevailing party an unreasonable expenditure of time and money. The Judicature Commission explained the situation in its final report in 1921, pages 68–70. It deserves more careful consideration than the Council has been able to give it with the time at their disposal during the past year. We refer to it as a subject of great practical importance which we expect to consider in the near future and as to which, in the meantime, we shall be glad to have any suggestions from the bench and from the bar.

Revision of the Forms of Writs.

There is much criticism of the forms of writs used in Massachusetts on various grounds. The Council is not yet ready to

make recommendations, but calls attention to the subject as one under consideration, as to which they will be glad to receive suggestions and on which they will report later.

WILLIAM CALEB LORING.
FRANKLIN G. FESSENDEN.
CHARLES T. DAVIS.
WILLIAM M. PREST.
FRANK A. MILLIKEN.
ADDISON L. GREEN.
ROBERT G. DODGE.
FREDERICK W. MANSFIELD.
FRANK W. GRINNELL.

APPENDIX A.

I.

REPORT OF ROBERT G. DODGE, ESQ., ON CERTAIN FEATURES OF ENGLISH PRACTICE.

For the Judicial Council, September 8, 1925.

I went to England in July, carrying various letters of introduction obtained for me by Judge Loring and others given me by Mr. Grinnell, and spent much of the time during the last ten days of the month in and about the courts. I was primarily concerned with the methods of dealing with interlocutory matters arising before trial, but certain other matters came to my attention which I think are of sufficient interest to be referred to in this report.

I sat with various masters on five mornings, — once with a master in the Chancery Division, three times with King's Bench masters, and once with the chief taxing master. In the afternoons I spent many hours in the different branches of the Supreme Court, hearing cases tried or argued in the three divisions of the High Court and in the Court of Appeal. One morning I sat with Judge Parry in the Lambeth County Court. I had several talks with Sir Willes Chitty, the senior master, and with judges and others. Being advised that Indermaur's "Manual of Practice" is the best treatise on the subject, I obtained a copy of the last edition, published in 1919, which proved to be of much assistance.

From these various sources I gathered information or impressions, and the topics which seem perhaps to be of particular interest to the Judicial Council I deal with briefly in this report.

THE MASTERS OF THE SUPREME COURT.

There are, I think, fifteen masters (exclusive of the taxing masters), of whom nine are attached to the Chancery Division and six to the King's Bench Division. I gathered that the nine were appointed from the ranks of solicitors, and the six from barristers, and that the appointments are for life. The salary is £1,500 per annum, and the positions seemed to be filled by men of standing and of good ability. I was very much impressed with their zeal, interest in their work, knowledge of the law and of human nature, and facility in dealing most expeditiously with a great variety of matters.

With certain exceptions, not now important, the masters have all the powers of judges in chambers. There are daily printed calendars of the cases to come before them, and among other things they dispose of most of the matters of the kind which occupy the time of our motion sessions. Their decisions are all subject to appeal to a judge in chambers, or in certain cases to a Divisional Court.

In the Chancery Division the masters seem to be concerned mainly with the administration of estates and trusts, the passing upon accounts, and similar matters which with us are dealt with by the Probate Court. In cases of actions in which equitable relief is claimed, they perform functions similar to those performed by the King's Bench masters, but in view of the primary object of my investigation, it was the proceedings before the latter masters which were of particular interest.

The Determination of the Issues on which Cases are to be Tried.

I learned at the outset that I had a wholly erroneous impression as to this matter. I had supposed that the issues were framed by the master after hearing a statement of the respective contentions of the parties, and were no longer determined by pleadings. This is not the fact. Issues are not framed by the masters. Ordinarily they are fixed by the pleadings, that is to say, by the "Statement of Claim" and the "Defence," which in brief form and without technical language state the cause of action and the defence thereto. Bills in equity as well as declarations have been abolished, and the plaintiff's cause of action, whether legal or equitable, is set forth in the statement of claim.

It is to be noted, however, that upon the summons for Directions, hereinafter considered, the master may direct that no pleadings be filed. Upon each writ must be indorsed a brief description of the plaintiff's claim, and it may be that the parties are fully aware of the points involved between them, or agree expressly as to the issues to be tried so that pleadings (which have to be printed unless they contain less than ten folios of 72 words each) would be an unnecessary expense. In such a case the master may direct that there be no pleadings, or that certain particulars only need be filed. In most cases, however, there are pleadings.

In cases where the writ is "specially indorsed," that is to say, is indorsed with a claim for a debt or other liquidated demand,

no further statement of claim is filed, and the issue is fixed by the indorsement on the writ and the defence.

The only class of cases in which, so far as I could learn, the master frames an issue, comprises interpleader suits, where the master may order an issue between the claimants to be tried and direct what the issue shall be.

The Summons for Directions.

This is a most interesting feature of English practice.

It is obligatory upon the plaintiff in all cases (except where the writ is specially indorsed and in certain other classes of actions not now material) to take out a summons for directions within fourteen days after the defendant has appeared. This is made returnable in not less than four days, and comes on for hearing before a master (except in commercial cases hereinafter referred to).

At the hearing the master enters an order determining whether there shall be pleadings, and if so, how soon they shall be filed; whether the parties shall exchange affidavits of documents, stating what documents are or have been in their possession or power relating to the matters in question; whether the action shall be tried with or without a jury, and if with a jury whether a common or special jury, and where the trial shall take place; and as only partial directions can ordinarily be given at the outset, liberty is given either party to apply for further directions. Thereafter, on two days' notice, either party may make application, under the summons, for any interlocutory order; and in this way most of the matters are dealt with which come up in our motion session.

Under the summons for directions very broad powers may be exercised by the master (subject, of course, to appeal). Thus he may shorten the ordinary time allowed for pleadings, may fully control the question of discovery, may order final judgment by consent, may dismiss for want of prosecution, or strike out the statement of claim and dismiss the action as frivolous.

The affidavit of documents, which is ordinarily ordered to be filed by each party in any case where the documents in the possession of each will naturally be material, calls for a statement under oath of all the documents relating to the matters in question in the action which the party has in his possession, with a list of those, if any, which he objects to producing, and a statement of the reasons for such objection, and a list of documents formerly in the party's possession with a statement as to what has become of them, and an affidavit that he does not now have and never has

had in his possession or control any "deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document, or any other document whatsoever," relating to the matters in question.

Provision is made for assuring to a party an opportunity to make a prompt examination of the material documents in his opponent's possession.

Either party may interrogate the other, but there must first be a hearing before the master in advance on the propriety of the proposed interrogatories. The fact that they have been allowed by the master does not preclude the party interrogated from raising the question that he ought not to be required to answer particular interrogatories, and costs may be taxed against a party who has administered interrogatories unreasonably, vexatiously or at improper length. It is needless to say that under this practice voluminous interrogatories are seldom filed.

Orders made by a master upon an application filed under the summons for directions ordinarily include a direction as to the costs of the application.

Specially Indorsed Writs.

In England there is an excellent method of dealing with actions for debts or other liquidated claims, and of giving the plaintiff his judgment with great promptness if in reality there is no defence, and of assuring a very speedy trial if the case will not require much time. Matters of this character seem to be perhaps the most common with which the King's Bench masters have to deal.

If the plaintiff seeks to recover from the defendant merely a debt or liquidated demand in money payable by the defendant, he may use a "specially indorsed writ" upon which a statement of his claim is indorsed, and then becomes entitled to proceed under Order XIV of the standing orders of the court. This order provides that when the defendant appears in such a case the plaintiff may at once file an affidavit verifying the cause of action and stating that in his belief there is no defence, and apply for an order to enter judgment for the amount indorsed on the writ, with interest and costs. This application may be brought on for hearing before the master on four days' notice, and at the hearing, unless the defendant by affidavit or otherwise satisfies the master that he is entitled to defend the action, the master may order the entry of judgment notwithstanding the defendant's appearance. If it appears that there is a defence to only part of the plaintiff's

claim, judgment may be entered at once for the balance. If satisfied that there is an issue upon which the defendant should have a trial, the master gives leave to defend. Sometimes this leave is given conditionally upon the defendant paying a certain sum into court within a given time.

When leave to defend is given, the master may give the same directions as to the further conduct of the action as can be given under a summons for directions, and may order the action to be set down for trial forthwith, and if the case is simple and will apparently not take long to try, he may order it put on the so-called Short Cause list for speedy trial.

A Typical Day's Proceedings before a Master.

On one of the days on which I sat with a King's Bench master I took notes of some of the matters coming before him, which I think were typical of the usual work of the masters in this division.

On this day, as regularly, three of the King's Bench masters had lists of cases coming before them on interlocutory applications, while the other three were also sitting in their chambers, two hearing cases on the merits which had been referred to them, and the other sitting as "practice master," which means, as I understand it, that he devoted most of the day to answering questions and giving directions as to points of practice. (With reference to the two who were hearing cases on the merits, it is important to note that the masters perform an extremely useful function in being always on hand and ready, except when dealing with their regular lists, to take referred cases and give prompt hearings.)

Master Simner, with whom I sat on July 27, had a list of 51 cases assigned to come before him, of which 13 were marked for 11 o'clock (these were "time summonses"), 13 were marked for 11.30, and 19 for 12. All of the foregoing were noted in the calendar as "not attended by counsel." The remaining 6 cases were set for 1.30 and were noted as "attended by counsel."

Except for these six cases, in which barristers appeared, the other matters were all presented by solicitors or solicitors' clerks, generally the latter. These clerks were of all ages, often slovenly, inferior and unattractive in appearance, but informed as to their cases and skilled in practice. The matters were dealt with rapidly and after only the briefest arguments.

The "time summonses" were applications for an extension of time for filing some paper or doing some other act, and a short extension was generally granted.

The following specific cases illustrate the ordinary run of matters with which the master was called upon to deal:

1. *Action on a Promissory Note.* — Application by plaintiff under Order XIV for an order to enter judgment for the amount claimed, notwithstanding the appearance of defendant. The latter presents an affidavit which the master decides entitled him to defend. The master believes the case can be quickly tried, and so, in giving leave to defend, orders "Short Cause" list.

2. *Another Application under Order XIV.* — The defendant's affidavit shows that to part of the claim there is no defence. Judgment ordered for that part, with stay of four days before entry.

3. *Another Similar Application.* — No defence is shown. Plaintiff states that £25 has just been paid on account. Judgment ordered for balance.

4. *Another Similar Application.* — Upon reading the defendant's affidavit the master gives him unconditional leave to defend, but as the amount involved is less than £100, orders the case transferred to the proper county court.

5. *A Summons for Directions.* — This, like practically all such summonses, is dealt with by the master very quickly, perhaps in less than a minute. He merely takes the blank form of Order for Directions, fills in the times to be allowed for the filing of pleadings, says (it being an action of contract), "Mutual discovery, I suppose," and, the parties assenting, leaves untouched the printed words requiring affidavits of documents to be furnished by each party within ten days after notice; fills in the place for trial after inquiry as to convenience of parties and witnesses; and prescribes the method of trial, whether by judge alone or by common or special jury, the parties ordinarily agreeing, but either having a right to a special jury if he chooses to pay the fees required. The printed words providing that "the costs of this application shall be costs in the cause" are left untouched. (*Note.* — In the ordinary action of tort or other action where documentary evidence is presumably not of importance, the order for the affidavit of documents is struck out.)

6. *An Action of Tort involving a Claim beyond the Usual Jurisdictional Limit of the County Court.* — Defendant files an affidavit that plaintiff has no visible means of paying costs if he loses, and asks that the case may be transferred to a county court, under a statute authorizing transfer of such cases and allowance of costs after transfer only on the county court scale. Plaintiff admits he has no money. Order for transfer made.

7. *Application by a Judgment Creditor for a Garnishee Order.* — Order made, after very brief hearing, directing payment by garnishee.

8. *Case in which Plaintiff was admittedly entitled to Judgment in an Action on Checks, payable in Francs.* — Parties disagree as to the date as of which the equivalent in English money is to be determined. Master decides.

9. *Application for Transfer of Case to County Court on Account of Plaintiff's Inability to pay Costs.* — Order made for transfer, to be effective unless plaintiff pays £20 into court within seven days.

10. *Summons for Directions.* — Action for breach of covenant in lease to make repairs, question being whether the required work had been done. Defendant appears in person and asks for trial by jury. The master denies the request, stating that there is no reason why the question cannot be better determined by a judge. (There is an absolute right to trial by jury only in cases involving fraud or in actions for libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise, and in certain matrimonial cases and probate cases.)

11. *An Application by One Party for Leave to file Certain Interrogatories to the Other.* — The proposed interrogatories are only eight in number, and the master goes through them carefully, dealing with each by itself and allowing some and disallowing others. (I thought those he disallowed might properly enough have been allowed, but his treatment of them indicated that a party desiring to interrogate in the English courts must show pretty clearly that he ought reasonably to have the desired information.)

Apparently the masters are fully occupied when not dealing with their regular lists, and, as I have said, give much time to hearing referred cases or cases submitted to them by agreement.

It is obvious that they not only relieve the judges of a great amount of work, but contribute very materially to the speedy dispatch of business.

Commercial Cases.

Cases which fall into this classification are dealt with in a special way, under a system established by the judges themselves some time ago under the lead of Lord Justice Mathew.

Arrangements are made by which the cases are placed upon a special list and tried very promptly, on an assigned date, by a

judge experienced in such matters, generally without a jury, although the parties may have a jury if desired. While I was in London an action on this list brought by an American company against a fire insurance company to recover on account of the burning of a steamer was being tried before a city of London special jury, that is to say, a special jury drawn entirely from the city proper, whose inhabitants are supposed to have some familiarity with commercial affairs.

Commercial causes are defined as including "causes arising out of the ordinary transactions of merchants and traders; amongst others those relating to construction of mercantile documents, export or import of merchandise, affreightment, insurance, banking, mercantile agency, and mercantile usages." I understand that the definition is liberally construed.

Either party may apply to have a case transferred to this list, by taking out a summons for directions, returnable before the commercial judge, asking for an order that the case be transferred to the commercial list, and, in substance, for directions with respect to all other matters covered by an order for directions. If the case is transferred the summons for directions is dealt with throughout by the judge, and not by a master. A special date is always assigned for the trial of commercial cases, and if the judge regularly handling the list is otherwise engaged on that date, another judge will take the case.

Mr. Justice Sankey told me that the judges made the commercial list a success by really favoring these cases over others, for example, by assigning them to specially trained judges, by seeing to it that they are promptly tried, on fixed dates, and by often relaxing the ordinary rules of evidence, as, for example, by arranging for the use of affidavits of foreign witnesses.

Costs.

Costs are taxed in London by one of the taxing masters. This applies not only to costs to be taxed as against the adverse party to an action, but also to costs as between solicitor and client, for the client has a right to have the bill rendered to him by his solicitor submitted to a master for taxation.

Costs taxable in an action appear to be computed according to a scale covering every detail of the proceedings, subject to the exercise by masters and court of very broad discretionary powers which enable them to penalize parties for unreasonable or improper conduct at any stage of the case.

Precedents of bills of costs may be found in Indermaur's "Manual of Practice," pages 400–406. The bills are itemized to the last degree of detail, some of the items being as small as one shilling, and the great bulk of them less than one pound. They cover a charge for practically every step taken by the solicitor in the preparation and trial of the case, with his disbursements, including the fees of the barrister, or, rather, a certain allowance on account of such fees, for where leading barristers are employed the fees allowed are generally much less than those actually paid.

If costs have been improperly increased by delay, vexatious or unnecessary proceedings or other misconduct or negligence, or if the amount is excessive with respect to the money involved in the case or other circumstances, the master allows only a reasonable amount.

The Substitute for the Demurrer.

In England the demurrer has been abolished. A party who desires to raise a point of law which would formerly have been ground for a demurrer may do so in one of two ways:

1. He may set up the point of law in his pleading in addition to his defence upon the facts, and it will be disposed of at or after the trial by the judge who tries the case, provided that by consent, or order of court, it may be heard before the trial, in which case the action may be dismissed if the point is well taken.

2. He may apply to strike out his adversary's pleading as disclosing no cause of action or defence, as the case may be.

It is said that unless the case is very plain the first is the appropriate method to pursue.

Appeals from Interlocutory Orders and in General.

All the decisions of masters are, as has been pointed out, subject to appeal to the judge or a divisional court, and it is entirely possible for an appeal from an interlocutory order to be taken even to the House of Lords without awaiting a final decision in the case in the courts below.

From a decision of the judge on an interlocutory matter there is, however, no appeal without the leave of the judge or the Court of Appeal except in certain classes of cases, such as cases where an injunction is granted or refused, or a receiver appointed; or divorce cases where a decree *nisi* is entered; or admiralty cases where liability is determined; or cases where unconditional liberty to defend an action is refused under Order XIV.

The bill of exceptions is unknown in English practice. Applications for a new trial are made to the Court of Appeal and may be based on alleged misdirection of the jury, or the improper admission or rejection of evidence, or on the ground that the verdict was against the weight of the evidence, or that the damages were grossly excessive, or that some other reason for a new trial exists. No new trial can be granted for misdirection or for erroneous rulings upon evidence unless the Court of Appeal believes that some substantial wrong or miscarriage has been thereby occasioned. The evidence goes to the Court of Appeal by means of a copy of the judge's notes, although in practice, where there has been a stenographer at the trial (which is by no means always the case), it is customary to use the stenographer's report.

In connection with applications for a new trial or appeals the record is not printed, except on appeals to the House of Lords or Judicial Committee of the Privy Council. And no briefs of counsel are submitted in connection with the argument of any case.

The Court of Appeal has power to take further evidence, allow amendments, draw inferences of fact, and give any judgment or make any order which ought to have been given or made below, or it may, of course, order a new trial.

References.

Our practice of referring equity cases to special masters who find the facts finally, without reporting the evidence, and whose reports are dealt with on exceptions, and of referring actions at law to auditors whose reports are merely evidence at the later trial, is unknown in England.

There an action of any kind may be referred to a "referee" for a report upon any question arising therein, or for a trial upon the merits, but without consent the court cannot refer a case for complete adjudication unless it requires a prolonged examination of documents, or scientific or local investigation which cannot conveniently be made in an ordinary trial, or unless the question in dispute consists wholly or partly of matters of account.

There is an appeal to the court from the referee's decision in such cases, and the court may set aside or vary the decision or give any other decision or recommit the matter for further consideration.

In hearing referred cases the King's Bench and Chancery masters are really acting as referees, not as masters in our sense of the word.

The Number of Judges in England and the Amount of Civil Business Done.

Within a few months two additional judges of the King's Bench Division have been provided for, so that, including the Lord Chief Justice, there are eighteen judges in that division. There are six judges in the Chancery Division and three in the Probate, Divorce and Admiralty. There are about fifty-four county court judges. The judges referred to try practically all the civil cases in England and Wales, the only other courts which try any being about eight local courts, such as the Liverpool Court of Passage and the Courts of Chancery of the Counties Palatine of Lancaster and Durham.

In support of the bill for the two additional judgeships of the King's Bench Division, above referred to, the Law Times, in its issue of December 20, 1924, said:

> It is scandalous that litigants should have to wait six months and more after their causes are entered for trial before there is even a likelihood of a judicial hearing. This is what has happened during recurring periods in the past fourteen years, and it is only after repeated pressure that temporary relief is given, and when that is withdrawn the same uncertainty and delay returns.

The pamphlet containing the Civil Judicial Statistics of England and Wales for 1923 show the following number of cases to have been tried or disposed of in the King's Bench Division during that year:

Cases tried in London	1,422
Cases otherwise disposed of, London	1,353
Tried or otherwise disposed of in Court at Assizes	1,831
	4,606

It is not clear to me what the words "otherwise disposed of," with reference to the London business, and "otherwise disposed of *in Court* at Assizes" mean.

A vastly greater percentage of the cases is tried in England without a jury than with us. Thus of the cases tried in London in 1923 only 267 were tried with a jury.

In 1923 the King's Bench judges sat in court a total of 2,397 days.

In the same year the county court judges heard 46,123 civil cases and their registrars heard 203,026 more. Vast numbers of cases were "determined without hearing" or were "struck out or withdrawn."

It is interesting to note that of the actions brought in the county court during that year to recover money damages about 94 per cent involved claims of less than £20.

During 1924, which is the only year for which I have before me the statistics of our Superior Court, the judges of that court sat, for the trial of jury and jury waived cases, a total of 3,060 days and actually tried 3,157 cases.

During 1923 the number of appealed cases heard and disposed of in the English appellate courts was as follows:

In the Divisional Courts	286
In the Court of Appeal	463
In the House of Lords	61
In the Judicial Committee	114

The percentage of appealed cases in which the decisions below were reversed or varied was large, as appears from the following table:

	Per Cent.
Divisional Courts	39
Court of Appeal	40
House of Lords	28
Judicial Committee	37

Miscellaneous Matters.

In view of certain matters which have already been considered by the Judicial Council the following may be worthy of note:

1. The substantial words in the writ as used in the High Court of Justice are:

We command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of

And take notice that in default of your so doing, the plaintiff may proceed therein and judgment may be given in your absence.

. . . . . .

The Plaintiff's claim is for

2. In the Supreme Court of Judicature (Consolidation) Act, 1925, just passed by Parliament, the following provision is contained, in section 102:

> Where for the purpose of disposing of any action or other matter which is being tried in the High Court by a judge with a jury it is necessary to ascertain the law of any other country which is applicable to the facts of the case, any question as to the effect of the evidence given with respect to that law shall, instead of being submitted to the jury, be decided by the judge alone.

This provision is taken from a statute enacted in 1920.

II.

AN APPRAISAL OF ENGLISH PROCEDURE.[1]

By EDSON R. SUNDERLAND, Law School, University of Michigan.

Read before the American Bar Association at Detroit, Mich., September 2, 1925.

[After introductory remarks about the London meeting and the Law Courts, Professor Sunderland continued as follows.]

These courts, and the Old Bailey not far away, cast their enchantment over every visitor, luring him back day after day in a restless search for the secret of their success. How did they operate so quickly, quietly and effectively? There was no evidence of hurry, of driving pressure, of anxiety to make every moment count. On the contrary, cases often seemed to proceed with a rather slow dignity. And yet it was clear that the English court reached its verdicts and judgments far more directly, more simply and more rapidly than an American court. Why should it be so? A week was too short to supply the answer.

The following suggestions, in explanation of the mysterious efficiency of English justice, are the result of a more extended opportunity for observation enjoyed during the next six months after the close of the memorable London meeting.

In seeking the causes for the immense success enjoyed by the present English legal system, it will be convenient to recall the three major divisions of the procedural field. The first relates to

[1] By permission of Professor Sunderland.

the preparation and docketing of cases for trial, the second to the trial itself, and the third to the proceedings for review. These are, in fact, the three stages through which most of our litigation actually or potentially passes. These different stages, under the old practice in England, and quite largely under the present practice in the United States, were regarded as quite separate matters for procedural regulation, and the rules in relation to one were drawn with scant reference to the others.

Under the present English practice this theory has been completely abandoned, and a closely co-ordinated scheme, covering the entire field of litigation, has been worked out. English ingenuity perceived the enormous advantages which might be derived from a preliminary segregation of cases for specialized treatment and from a greatly extended use of discovery and disclosure before trial. Changes of a very radical nature, introduced into this preparatory stage of litigation, produced changes hardly less notable in the theory and practice of the trial itself, and the trial was further modified in a marked degree by the requirements of a novel and highly practical theory of review, which made the appellate court an integral part of a simplified and economical mechanism for judicial administration. The means by which these results were reached furnishes a subject of particular interest to the American Bar Association, which has become the dominating influence in the United States in behalf of procedural improvement. Without going into the details of the rules, I shall endeavor to present what seem to be the essential principles upon which the English system is based, treating it under the three heads of preparation, trial and review.

1. Preparatory Work.

That large body of English procedural law which deals with the preliminary preparation, inspection and arrangement of cases performs two major functions. It first provides a mechanism for the early segregation and prompt decision of those classes of cases which require either no formal trial or a restricted trial of a specialized kind, and second, it subjects the remaining cases, which must be tried in due course, to a severe process of disclosure and discovery before they are placed upon the trial cause list. Cases calling for summary judgments and declarations of rights are in this way withdrawn from the regular dockets, permitting them to go forward very rapidly under appropriate special proceedings, and, at the same time, freeing the regular dockets from much con-

gestion and delay. And the regular dockets themselves, because of the preliminary discovery which forces each party to lay most of his cards upon the table, are tried with remarkable speed and accuracy.

(*a*) *Summary Judgments.*

Summary judgment procedure, in essence, is nothing but a process for the prompt collection of debts. It was never employed by the common law courts, because they developed all their rules of procedure as mere by-products of controversial litigation, and such litigation is not adapted for collecting debts. Machinery for that purpose must provide a test to determine that the plaintiff has a debt and not a controverted claim, and a means for getting an immediate judgment without the expense and delay of a trial. The English practice does both of these things with neatness and dispatch.

The creditor issues a summons with a description of the debt indorsed upon it, files an affidavit of the truth of his claim and of his belief that there is no defense, and upon that showing, without pleadings and without the aid of counsel, he may bring the debtor before a high court master on four days' notice to show cause why a summary judgment should not be forthwith rendered against him. The burden is thus placed upon the debtor to satisfy the master, by convincing proofs, that he ought to be given the right to litigate the claim. No formal gesture, such as the affidavit of merits so often provided for in our summary judgment acts, will suffice. The masters want solid assurances, and sham defenses are ruthlessly rejected. Under the skillful hands of the masters these cases are disposed of very rapidly, five or ten minutes being usually enough. Very large judgments, running into thousands or even millions of dollars, are constantly being rendered in this summary way.

The immense value of the practice is indicated by its wide use. In the year 1923, for example, there were 6,773 summary judgments rendered by the masters of the King's Bench Division, as compared with 1,546 judgments entered by the judges after trial of issues. That means that by this device the trial dockets were relieved of 80 per cent of the cases which would otherwise have come before the courts for formal trial, and that claimants in all those cases got their judgments in as many days as it would have required months through ordinary litigation in the courts.

(*b*) *Declarations of Rights.*

Declarations of rights are not made in this summary way, but applications for them present limited issues, often largely of law, which can be disposed of in much less time than cases brought in the ordinary way. Most of these cases ask for the construction of deeds, wills, contracts or other written instruments, statutes or governmental orders.

The practice enables parties to bring questions before the courts for determination at an early period in the controversy, when few complications have arisen, and when the adjudication of a simple issue of construction may save parties from doing acts and committing themselves to courses of conduct which may afterwards be very difficult to deal with. At this stage no damages have yet been suffered, no steps have been taken which will have to be retraced, and no rights of third parties have intervened. Taken in time, the controversy may be kept within very narrow limits, and the decision will almost amount to an amicable adjustment under the advice of the court. Legal conflicts between individuals are evidences of social friction, and a wise government will be anxious to offer a remedy at the earliest possible moment.

The service rendered by the courts under the declaratory judgment practice is quite analogous to that rendered by modern hospitals which diagnose and treat diseases in their incipient stages and thereby prevent the development of more dangerous conditions.

So useful and effective has this practice become in England that several judges of the high court are frequently engaged simultaneously in making declarations of rights, and the size of the dockets which they dispose of is eloquent testimony of the speed with which the work can be done.

The procedure by which English courts administer both summary and declaratory relief has begun to stimulate a general interest in the United States. Notwithstanding the unfortunate experience of Michigan, whose Supreme Court announced the extraordinary doctrine that declaring the rights of parties is not a judicial function, a constantly growing number of States — no less than eighteen at the present time — are employing the declaratory judgment procedure, and the American Bar Association is urging similar legislation by Congress. Summary judgments have not yet made so persuasive an appeal, but New York and New Jersey have both adopted the very effective provisions of

the English practice.[1] In a land where time-saving devices are valued as highly as in this country, an adequate means for the prompt collection of debts through judicial process cannot be indefinitely deferred, and the English summary judgment ought to prove as useful to us as the declaration of rights.

(c) *Disclosure and Discovery.*

Having eliminated from the trial docket the cases calling for summary and declaratory judgments, the next problem is to provide the parties to the cases which must be regularly tried with all the information which is necessary to enable them to prepare for trial. Instead of conniving at the instinctive desire of counsel to keep his adversary as far as possible in the dark, lest by obtaining information he should become more formidable, the English rules provide for the most thorough disclosure and discovery.

Discovery is one of the primary titles in the books on English procedure. From a minor doctrine in the chancery practice it has grown into a controlling principle embracing all litigation in the high court. Practically every case, commenced in the ordinary way, is sent at once to a master on a summons for directions, who makes an order mapping out the course which it is to follow, and the main purpose of this order is to specify and direct the discovery which must be made forthwith.

If there are facts which either party believes will not be actually disputed, although formally in issue, and which he wishes to avoid the expense of proving, he may have an order calling upon his adversary to admit them. Unreasonable refusal to make such admission will load the cost of proof, after it has been successfully produced, upon the party who refused to admit. The practice is admirable, for such admission not only saves expense to the parties but saves the time of the courts in hearing proofs.

If there are matters regarding which either party wishes to obtain information from the other, he may have an order allowing him to put interrogatories which must be answered under oath.

And, most important of all, each party is entitled, almost as a matter of course, to an order requiring the other party to furnish a sworn list of all the documents — whether admissible in evidence or not[2] — which he now has, or ever has had, in his

[1] Summary Judgments under the Civil Practice Act in New York. By Judge Edward R. Finch, 49 Am. Bar Ass'n Rep. (1924), pp. 588–594.

[2] Compagnie Financière du Pacifique v. Peruvian Guano Co. (1882), 11 Q. B. D. 55.

possession, relating to the matter involved in the suit. This list must embrace everything in writing or printing capable of being read.[1] It must be set forth in two schedules. The first must contain all the documents that are in the possession or power of the deponent, and must be subdivided into those which he is willing to produce and those which he is not willing to produce; the second must contain all the documents no longer in the deponent's possession, with a statement as to what became of them and in whose possession they now are.[2] Upon the receipt of this list, the party usually gives notice in writing to produce such documents as he wishes to inspect,[3] and within a few days, subject to the possibility of an argument regarding the documents not willingly produced, by this simple and effective means, each party is supplied with copies of all the documents which he is entitled to inspect and which are known to be in existence, bearing upon the case.

There is nothing in the English court system which proceeds under such speed and pressure as a hearing before a master on a summons for directions. The solicitors are not allowed the luxury of a seat, but stand at a sort of high desk before the master, and are hardly given time to gather up their papers before the next group of solicitors has crowded forward to take their place. Each of the masters has a docket of sixteen or eighteen cases per hour, and he usually finishes the list on time. The summons for directions, by which the vast scheme of discovery is largely administered, is thus a tremendously efficient instrument.

It is, of course, impossible to determine how much court time is saved by these preliminary admissions, answers to interrogatories, and disclosures of documents, but an observer who compares the time used in an English trial with that ordinarily consumed by a similar trial in the United States, and notes the points at which speed is secured by reason of prior discovery, might perhaps estimate a 50 per cent saving. With the facts on each side mutually understood by both parties when the trial opens, leading questions no longer become objectionable on many features of the case, and the witness is brought at once to the point in controversy with no waste of time over formal preliminaries; the necessity for cross-examination is greatly reduced, and it is frequently omitted altogether; the formal introduction of evidence is largely dispensed with, for complete typewritten

[1] Rex v. Daye (1908), 2 K. B., 333.
[2] 11 Halsbury's Laws of England, 59, 60.
[3] *Id.*, 68.

sets of copies of the documents previously inspected are already in the hands of the judge and of counsel on each side when the trial begins, and they are usually introduced by consent; formal admissions of facts, and answers to interrogatories, eliminate entirely many features of the case which with us would call for extensive proof. With the element of surprise largely out of the case at the opening of the trial, there is no occasion for that elaborate maneuvering for advantage, that vigilant and tireless eagerness to insist upon every objection, with which we are so familiar, and which not only prolongs and complicates the trial, but helps to make the outcome of an American lawsuit turn as much upon the skill of counsel as upon the merits of the case.

Our bar has always been inclined to fear and distrust disclosure before trial. They have thought it would tend to produce framed-up cases and perjured testimony. But it must not be forgotten that want of disclosure causes great delay, inconvenience and expense, in preparation for trial, seriously prolongs the trial itself to the prejudice of the parties, the witnesses, the jurors and the court, and results in a defective and inadequate presentation of the real merits of the case, thereby diminishing public confidence in the ability of the courts to find the truth. In the development of the law of evidence, every reform has been opposed on the same ground, — that it would tend to encourage perjury. It is hard to realize that no longer ago than 1851, Lord Brougham's Act for the first time made parties competent witnesses in civil proceedings in the Superior Courts. There was great dread of the act, lest the interest of parties should encourage false swearing. Lord Campbell wrote in his Journal on June 19, 1851: "It [the bill] is opposed, as might be expected, by the Lord Chancellor. I support it, and I think it will be carried, although all the common law judges, with one exception, are hostile to it." [1] But the fear felt by the legal profession was groundless, as events have proved. The history of reforms, both in pleading and in evidence, has shown a continuous tendency to remove more and more restrictions on the disclosure of the truth. The spirit of the times calls for disclosure, not concealment, in every field, — in business dealings, in governmental activities, in international relations, and the experience of England makes it clear that the courts need no longer permit litigating parties to raid one another from ambush.

[1] Odgers, in A Century of Law Reform, p. 235.

2. The Trial.

When we pass from the preliminary and preparatory procedure, already discussed, to a consideration of the second stage in the process of litigation, namely, the trial, the obvious differences in court-room methods at once attract attention. But it is not so easy to identify the reasons for the points of difference. In making an analysis we are likely to stress the specialized bar, which develops experienced and skillful trial lawyers. But that is hardly an adequate explanation, for our larger law offices also have their specialists in court work, who are equal to the best of the English barristers, and yet their participation in a trial seems to make no material change in the character of the performance.

The secret of English efficiency probably lies in another feature of their system, which exercises a profound influence upon the entire conduct of the case in court, namely, non-partisan control by the judge rather than partisan control by the attorneys.

One seldom observes carefully those things with which he is very familiar, and American lawyers were generally somewhat surprised, after watching the proceedings in English courts, to realize how preponderate is the part taken by the attorneys in an American court, and, to a corresponding degree, how little the American judge participates in the active work of the trial. As the English themselves express it, the barristers only assist the judge in trying the case. There are, of course, three official agencies involved in a trial, — the judge, the jury, and the attorneys, and the main problem of trial practice is to make them cooperate most effectively in arriving at the merits of controversies. Two of them, the judge and the jury, should be non-partisan, because they are required to decide disputed questions between the litigants, while the attorneys, whose task it is to present the rival claims of the contestants, must of necessity be strongly imbued with the zeal of the advocate. Now the English theory of an efficient trial procedure seems to be predicated upon a distribution of the various proceedings embraced in the trial in such a way that those requiring impartiality shall not be delegated to the attorneys, and that those, on the other hand, which involve partisan interest shall be placed in the hands of the representatives of the contending parties.

Such a classification of the steps in a trial is perfectly easy. Since the selection of the jury is something which should be absolutely divorced from partisan influence, the impanelling should not be done by the attorneys. The opening statement of the

claims of the contestants, if it is to be made forcibly, *must*, on the other hand, be the work of the attorneys, and the same is true of the offering of evidence and arguments relative to its force and effect. But the jury should be instructed on the law with complete impartiality, and in this the attorneys should have no hand, and the same is true of the summing up of the evidence and of the supervision of the form of the verdict. If, therefore, each branch of the tribunal is to do what it is best fitted for, and is to refrain from attempting to do those things which are inconsistent with its nature and character, the jury will be impanelled by the judge or other court officer without any interference by the attorneys, and will be instructed on the law and informed (by way of summing up) upon the facts, by the impartial action of the judge, who will decide without any partisan advice or pressure as to what should be said to the jury. And finally, since the verdict is the judicial decision of the jury, and its value and effect may depend upon its form, an impartial direction and control should be exercised over this vital feature of the trial in the interests of both parties, indifferently, which, of course, points to the judge as the proper guide.

This theoretical division of functions in the interests of a fair trial is the absolute rule of practice in the English courts.

Five minutes before the court opens the clerk calls twelve jurors into the box, — usually ten men and two women, — and promptly swears them to try the case. As he finishes this brief and simple ceremony the judge steps through a door behind the bench, bows to the barristers and to the jury, takes his seat, and the trial is under way.

How many hundreds of thousands of hours are wasted annually in the United States in impanelling juries? How much do we reduce the average of jury intelligence, particularly in criminal cases, by our excessive challenges? To what extent is the systematic avoidance of jury duty on the part of our well-to-do citizens traceable to the humiliating cross-examination to which we subject our jurors and to the tedious and useless length to which we drag our trials? And finally, how much is the confidence of the public in the justice and integrity of the jury system impaired by our partisan wrangling over the personnel of the panel? These are interesting subjects for speculation.

The impanelling of an English jury is a dignified and impressive performance. They have already been selected for character and intelligence, like the judges themselves, and their names can be obtained by counsel for a shilling, in advance of the trial, if there is any desire to investigate them with a view to a challenge. As

a fact this list is almost never asked for. The clerk, as the representative of the government, not of the parties, draws and swears them, thus giving them a status independent of the contending parties, like that of the judge on the bench. Freed from the hostile inquisition of the rival lawyers, the jurors undoubtedly approach the case in a much more judicial frame of mind than would be possible under the American practice, and this clearly manifests itself in a closer co-operation between jury and judge.

English counsel state their cases well, put in their evidence carefully and thoroughly, and argue the facts with simple directness, without any attempt to carry the jury by emotional appeals or by flights of eloquence. This rather cold and businesslike attitude toward the jury is doubtless due to their conviction of the futility of any other course. For the judge has the last word with the jury, and no emotional effects could stand against the clear, cold summing up of an English judge, who has followed every move in the trial with experienced skill, taking diligent notes of all the salient features of the case. The judge is expected to see to it that the jury get a properly balanced view of the case, and if one side is pressed too hard the judge must correct it. In Hepworth's Case, 4 Cr. App. 130, complaint was made that the judge made derogatory observations upon the argument of appellant's counsel, but the Court of Criminal Appeal said that no harm had been done, for counsel had made a very eloquent speech and the judge had only tried to administer an antidote.

The value of a summing up is not appreciated in the United States, but in England it is considered the most important function of the judge. Doubtless that strange and anomalous rule followed by most of our State courts, which forbids comment by the judge on the weight of the evidence, has created so great a risk of error in summing up that our judges hesitate to take the chance, and either omit the summing up entirely or make it quite formal and perfunctory. A few weeks spent in watching jury cases tried in England will convince one that the summing up does more to secure a verdict based on the merits of the case than all the rules of evidence which legal ingenuity has devised. The judge not only recalls to the jury the various parts of the evidence and the different witnesses who testified, but he suggests such inconsistencies and improbabilities and such elements of corroboration as he has observed, and cautions the jury in regard to such evidence as is likely to appear entitled to too much or too little weight, such as admissions, testimony of accomplices, proof of a bad reputation for veracity, testimony colored by interest, evi-

dence admitted for a limited purpose, and evidence inherently weak or strong. He warns the jury against improper remarks of counsel or facts improperly brought to their attention, and in general undertakes to present to the jury a full, discriminating and well-balanced summary and analysis of the whole case proved before them. Naturally his presentation will have weight with the jury, as it ought to have, for there can hardly be any doubt about the immense value of a non-partisan summary after counsel have urged their antithetical views upon the jury.

"Trial by jury," says Dicey in his Law of the Constitution, "is open to much criticism; a distinguished French thinker may be right in holding that the habit of submitting difficult problems of fact to the decision of twelve men of not more than average education and intelligence will in the near future be considered an absurdity as patent as ordeal by battle. Its success in England is wholly due to, and is the most extraordinary sign of, popular confidence in the judicial bench. A judge is the colleague and the readily accepted guide of the jurors." [1]

Even more novel to an American lawyer is the English practice as to instructing the jury upon the law. Counsel have no more to say about the judge's charge than about his summing up. Instead of being a mere phonographic instrument for reading the instructions which counsel have prepared, the English judge makes his own statement of the law to the jury. The prcinciples involved in the case are pointed out, briefly and simply, in the course of the summing up, wherever they are applicable, rather than in the form of elaborately constructed paragraphs read to the jury one after another in a tiresome and unintelligible series. Counsel are not expected to even intimate to the judge how they would like to have the jury charged, and I once saw a learned barrister make a subtle effort to convey such a suggestion through his argument to the jury, only to be instantly stopped by the judge, who said, "Sir Edward, I think you may assume that I have sufficient knowledge to charge this jury properly without the assistance of counsel."

American appellate courts have often said that the judicial language of the judge is much more suitable for instructions than the strongly biased language of counsel, each of whom tries to state the law as favorably as possible for his own side. Neither of the lawyers striving to win his case can be expected to explain the law as clearly and fairly as the judge, therefore the English,

[1] 8th Ed., pp. 389, 390.

very logically, put the whole responsibility upon him, and exclude the partisan hand, and even the partisan advice, of counsel.

Finally, the English are much more economical than we are of the fruits of the trial, and always endeavor to adjust the verdict so that in case of error no new trial will be necessary. They do this wherever possible by means of special questions put to the jury, covering the actual issues litigated.

Special verdicts in the American practice are very unsatisfactory, because they are construed with the most technical severity. In the first place, they must be stated in the form of ultimate facts, and not evidence or legal conclusions, and since no one has ever been able to devise a test to identify ultimate facts, the use of a special verdict always involves a risk. Furthermore, we seem to have inherited the absurd rule that every fact in issue on the pleadings must be found in the special verdict, whether actually contested at the trial or not. This again adds to the hazard, for special verdicts, naturally but unfortunately, tend to follow the lines of the trial, rather than the pleadings, and one discovers only after the jury has been discharged that some uncontested though material fact has been omitted, thereby ruining the verdict. Again, the formal requirements are exacting, for the questions through which the jury are brought to deal with the facts must be clear, simple, direct, unambiguous, free from suggestive implications, and not too numerous or detailed; and the answers must meet the same tests. After fortunately escaping from the Scylla of the pleadings, one hesitates to take a chance with the Charybdis of the special verdict, and the result is that this immensely useful procedure is feared and avoided, and the parties timidly succumb to that crude relic of barbaric times, — the general civil verdict. If one questions the reality of the hazards involved, let him glance at Mr. Vilas's little book on Special Verdicts in Wisconsin, where the propriety, form or effect of the special verdict is shown to have been litigated before the Supreme Court of that State in 250 cases in the first 112 volumes of reports.

In contrast to our practice, which has made the machinery of special verdicts so intricate that it hardly functions at all, the English have developed an astonishingly simple and effective procedure. The judge himself, noting the material issues which have actually developed in the evidence, frames a few simple questions to cover them. He asks counsel on each side if they are satisfied with them, and any reasonable changes will be made

if suggested, and other appropriate questions added if desired. In a few minutes judge and counsel have agreed in open court upon the questions to be put, and neither side may thereafter complain that the questions are insufficient in substance or form or are inadequate in scope. They are put to the jury, the answers are taken, and judgment is rendered on the answers with or without argument.

The common law obsession that the technical record, or judgment roll, must alone be sufficient to support the judgment, without reference to what really occurred at the trial, although it flourishes with undiminished vigor in the United States, seems to have completely lost its power to hypnotize and charm the English. For them the record is only a means to an end, and its importance cannot extend beyond the limits of its utility. The framing of issues by the judge at the trial is a practical and effective method of administering justice, and this alone is a complete defense of its validity. By means of these special issues, the verdict is in effect made up in separate compartments, one or more of which may be affected by error without scuttling the whole verdict.

The result of the English system is to make the calamity of a new trial almost unknown. The English reports for 1924 show only two cases sent back for new trials in the King's Bench Division during the whole year. In the same period the Supreme Court of Michigan, which I assume is typical of the United States, sent back fifty-seven cases for new trials. But the discrepancy is really much greater than this, for in England the trial courts cannot grant new trials, but application must be made by way of appeal, while in Michigan, as in most American States, new trials are ordered with great freedom by trial courts, so that the total number of new trials actually ordered in Michigan during the year 1924 might very likely have been a hundred times as great as in all of England and Wales.

Lord Alverstone, when Chief Justice of England, testifying before a select committee of Parliament which was investigating the state of the business in the King's Bench Division in 1909, said:

> In the old days . . . the judges used to rule and there were arguments before the court *in banc* and cases were sent down for new trial. The modern practice . . . is that points are taken if necessary and questions of fact are left to the jury to decide. The other questions are dealt with in the Court of Appeal. In the result . . . the number of new trials is, comparatively speaking, infinitesimal. They only take place

now practically when the judge has misdirected the jury. They do not take place where the judge has heard the case without a jury, because the Court of Appeal set him right. New trials are very, very few.[1] . . . I have myself on more than one occasion said: "I think that such-and-such is the view of the law, but I will ask the jury this question and get their verdict;" and the Court of Appeal have entered judgment the other way, having regard to what the true view of the law was. If I had not done that they would have sent it down for a new trial in order that the facts might be ascertained.[2] . . . A judge is expected to exhaust the questions of fact which are likely to arise in the case.[3]

New trials are a total economic loss, and their frequency in the United States is the most convincing proof of the utter inadequacy of our trial procedure. The profession is inclined to take a rather fatalistic attitude, as though rules of practice, especially if hallowed by long observance, were immutable, like the law of gravity, and the public must make the best of them, just as it makes the best of the various forces of nature. But the profession is suffering from the complaisance which affects every monopolistic institution. Instead of expecting commercial, industrial and social relations to adjust themselves to the obsolete equipment with which the judicial establishment does business, the profession should, as it had done in England, scrap a large part of the machinery and provide new devices to correct the defects which have become an intolerable burden upon society.

3. Appeals.

In the final stage of litigation, the appellate review, the English rules are clearly founded upon the simple proposition that an appeal, in its formal aspects, should involve no technical difficulties whatever. The judgment record already exists. If the papers which make it up are filed in the appellate court office, and the appellee is notified of such filing, nothing more would be essential to a perfected appeal. An appellate process reduced as nearly as possible to this degree of simplicity would be an unmixed economic advantage, for the only purpose served is the mechanical one of effecting the transfer with notice to the appellee, and every added restriction, requirement or condition merely presents an obstacle and imposes a risk. Unnecessary friction always impairs a mechanical device.

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[1] Report of the Joint Select Committee on the High Court of Justice, 1909. Appendix, p. 10.

[2] *Id.*, p. 14.

[3] *Id.*, p. 15.

The English practice in taking an appeal so successfully meets its theoretical aim that there is almost no way of making a mistake. Nothing is required but the ability to read and to operate a typewriter. Bills of exceptions became obsolete in England so long ago that some of the oldest men now in the law court offices never heard of them. Assignments of error have also gone the way of the cross appeal, the writ of error, and other extinct monsters of the cave-dwelling period of English law. To perfect an appeal the English barrister serves a notice upon the respondents that he will move the Court of Appeal in fourteen days to reverse the judgment.[1] He then files with the clerk of the Court of Appeal three typewritten copies of the notice of appeal and of the pleadings, evidence and opinion below.[2] There are no abstracts, or condensations, or reductions to narrative form, to be worked out, wrangled over and settled. The appellate record is merely a copy of existing documents. There are no exceptions. If the appeal is too late, the court can extend the time for good cause shown; if the parties change by death or otherwise, the court may order substitution; if additional parties should be joined, the court may at any time order that they be notified; if additional evidence is needed in the Court of Appeal it may be ordered brought in, either by oral testimony or affidavit or deposition; if new points not raised below ought to be considered, the court may order or allow that this be done.[3]

The appeal is by way of rehearing, which was defined by Sir George Jessel, Master of the Rolls, as meaning that the appeal was not to be confined to the points mentioned in the notice of appeal.[4] Indeed, the rules do not require any grounds of appeal to be mentioned in the notice, and according to the current practice about half the notices specify grounds and the other half do not. The case is therefore not reviewed for errors, but reviewed at large upon the merits, and to insure the broadest usefulness, the Court of Appeal is given all the powers of the trial court, and may draw inferences of fact and make any judgment or order that ought to have been made or make any further order that justice may require.[5] The avowed aim is to enable the appellate court to completely dispose of the case so that when the appeal has been decided the litigation is at an end.

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[1] Order 58, rule 1, rule 3, Chitty's King's Bench Forms, p. 611.
[2] The Annual Practice, 1923, p. 1145.
[3] The Annual Practice, 1923, Order 58 and notes.
[4] Purnell v. Great Western Ry., 1 Q. B. D., 636, 640.
[5] Order 58, rule 4.

The good business sense of the English shows itself in the fact that they do not require records in the Court of Appeal to be printed, although the House of Lords is more fastidious. It is an obvious extravagance to set up anything in type when only a half dozen or a score of copies are needed. Costs taxed for printing bills are practically thrown away, for preliminary typewritten copies must be prepared anyway, and, with substantially no extra expense, carbon or mimeograph copies could be run off for the court and parties, and the printing dispensed with entirely. By using good paper, open spacing and left-hand binding, the English records are perfectly easy to read and refer to. Printed records and briefs in the Supreme Court of Michigan now average about 20,000 pages per volume of reports. If this is typical of all our courts, the present output of about 150 volumes of reports a year indicates an aggregate printing bill of enormous proportions.

The most remarkable thing about the hearing of an English appeal is the total absence of written briefs and the supreme importance of the oral argument. In the Court of Appeal, and even in the House of Lords, briefs, such as we universally use in this country, are unknown, and neither the opposing counsel nor the court are notified in advance of the hearing what arguments or what authorities will be relied on. The theory seems to be that since the case has once been tried and comes before the appellate court for a rehearing, there is no reason why counsel should not be presumed to know enough about the case to discuss the merits of the decision intelligently without special notice of points. In fact, it is quite possible that the want of specification of points has a distinct tendency to emphasize the importance of the broader equities and aspects of the case, and to confine the arguments to such questions as obviously affect the merits. The same result, perhaps, follows from the want of written briefs. A multitude of inconsequential points may be argued quite effectively in a written brief, but an oral argument, if actively participated in by the judges, almost inevitably centers about the solid and meritorious features of the case. Trivial or technical matters which would fill many pages in the briefs, might never emerge into the region of serious discussion if they waited for the oral argument. Having been strongly urged in the briefs, they seem to call for consideration in the opinion, with the final result that the merits of the case have become involved in a mass of collateral issues, which may unfavorably influence the disposition of the case and are likely to be the means of introducing uncertainties and technicali-

ties into the law. Technical points get a cold welcome when argued before the judges of the English Court of Appeal, and the result is that counsel do not raise them. The appeal proceeds, therefore, as a simple rehearing on the merits of the judgment, and, with the case cleared of legal bric-a-brac, the attention of court and counsel is effectively concentrated upon the main questions involved.

One may sit for days in the courts of the King's Bench Division and hardly hear a question raised on the admission or rejection of evidence. The fundamental principles of evidence are observed with substantial fidelity, and yet an American lawyer would find opportunities for constant objections. Why is the barrister so indifferent? Presumably the answer lies in the Court of Appeal, which, through its power to affirm or reverse, sets and maintains standards for the conduct of the trial. Unless technical objections will be sustained above, they will not be made below. The trial inevitably reflects the attitude of the reviewing court. In the year 1924 not a single case from the King's Bench Division was reversed for error in admitting or excluding evidence. That simple fact explains why the intricacies of evidence no longer terrorize the English lawyer. And it explains the success of the whole judicial establishment. Procedure has become a practicable means to an end. Its rules are no more exacting than efficiency requires. The human element with which judges and lawyers deal — namely, witnesses and jurors — are subject to so many psychological factors which cannot possibly be measured or known that it is unreasonable to expect mathematically accurate results. No one demands that a stone mason shall show the same degree of precision as a diamond cutter, and it would be foolish to refuse to accept a job of stone work because it did not measure up to the jeweller's standards. The common law judges overlooked this obvious truth, and were always examining masonry work with microscopes and condemning it if they found flaws. That tradition has come down to us. Hundreds of different elements enter into a verdict: the education, associations, environment, family connections, religious convictions, social habits, prejudices, ambitions and moral character of each juror, which must be multiplied by twelve for the panel; the same elements plus the vagaries of memory, the effect of imagination and suggestion, personal capacity for observation, and the influence of interest, for every witness; the skill of the lawyers in selecting witnesses, putting in proof, and appealing to the jury; the

accidents of the trial which emphasize this or that feature unexpectedly. None of these factors can be quantitatively determined, and yet the result is affected by every one of them. Their aggregate weight measures the unavoidable liability to error in either direction, and this aggregate is very large. Now it is quite clear that it is useless to demand a greater degree of precision in one element than is possible in the others which enter into a final result. If scales are accurate only within a pound, there is no value whatever in taking readings of fractions of a pound. So if the unascertainable elements in the trial give a certain accidental range of variation, it is absurd to reject the verdict because of errors elsewhere in the trial which affect the result to a less degree than the unknown elements. For example, a bit of hearsay is admitted. The question should be, Is that feature of the case likely to exercise a more profound effect upon the verdict than the whole personal and psychological complex of the jurors, witnesses, lawyers and judge? If not, it should be ignored, by the simplest principles of logic. By this test very few of the errors which daily occur in countless numbers in trial courts would be reversible. The common law strained at the gnat, — the error in evidence or trial practice, — and swallowed the camel, — the vast unknown elements of personality and psychology which every lawyer knows are the powerful undercurrents which draw verdicts in one direction or another. The English Court of Appeal founds its practice on a more thorough understanding of the nature and the possible precision of a judicial tribunal. If the mesh of its sifting device is large enough to let a camel through, it shows no perturbation if gnats or even larger insects pass.

The rules of evidence and the rules of trial practice should be deemed at best only statements of judicial policy, mere guide posts for the information of court and counsel. The excellence of the results obtained in a given case depends with no more certainty upon a literal compliance with those rules than does success in literature, sport or politics invariably depend upon the exactitude with which one follows the formal rules for writing poetry, playing golf or running for office. Good methods are to be encouraged, but ought not to become a fetish. After all, the courts are engaged in the business of adjudicating cases, not of vindicating procedure, and every judgment which is upset merely because obtained contrary to rules shows a failure of the courts to serve the main purpose of their existence. Such failures have been rare in England since the opening of the present century.

Why have the English succeeded in developing a system of procedure so much superior to ours? The answer appears obvious. Although we in the United States have been as keenly interested in procedural reform as the English, they have been much bolder in the measures they have adopted. Perhaps our constitutional system, which has accustomed us to an acquiescense in things as they are, is partly responsible for our timidity. But procedure stands on a totally different ground from the law of rights and duties. The whole body of rules could be changed over night without prejudice to any one except the lawyers who would have to learn the new ones. But that would be a small price to pay for a really adequate and businesslike system of judicial administration. Our reforms in procedure are too slight, too tentative. They have no sweep and scope. We feel our way like blind men who fear to fall. In every other field of human endeavor more efficient methods are being sought with restless eagerness and with no concern for the old equipment which must be scrapped. The legal profession alone halts and hesitates. If it is to retain the esteem and confidence of a progressive age it must itself become progressive. In this respect the Old World has set an example for the New.

III.

CHIEF JUSTICE BOND'S ACCOUNT OF THE MARYLAND PRACTICE OF TRYING CRIMINAL CASES, AT THE ELECTION OF THE ACCUSED, BY JUDGES WITHOUT JURIES.

Because of its by-products in facilitating the rapid disposal of criminal dockets in Baltimore and the prompt trial of any one case, the long-established Maryland practice of trying such cases, at the election of the accused, before judges alone, without juries, has become a subject of inquiry from other States; and this paper is intended to furnish the information desired. It is a rewriting of a statement prepared some years ago for the editor of the Massachusetts Law Quarterly, copies of which have been asked for, but are not available. The historical discussion in the paper goes beyond the needs of inquirers in other States, and may have little interest for them, but it has all been included in order to preserve a record of the facts now at hand.

The present Maryland practice appears to be a development

from the ancient English practice of submission to a fine on a charge not capital and punishable by fine, without contesting the charge, the practice which survives in some jurisdictions under the name of *nolo contendere*. The history of it in Maryland cannot be exactly stated without a more extended examination than has yet been made of the records of colonial trial courts. The records of the Baltimore County Court of 1693 and 1694 show trials without juries, at the election of the accused. The usual entry was that John Gamble or George Mattox, or whoever else may have been the defendant, "Pleaded not guilty and put himself upon the Court." And the court found him guilty or not guilty. Such proceedings would seem to have been plain non-jury trials. The plea, issue and verdict all appear to have been present. That fact, and the fact that trials without juries were held in criminal cases in seventeenth century Massachusetts (Massachusetts Law Quarterly for August, 1923, pages 7 and 27), suggest the need of an investigation of facts before any statement is made that trial by jury in criminal cases was the only form known to the early American law. It is possible to assume too close an adherence to English practice in the colonies.

During the eighteenth century, it appears, misdemeanor cases came to be dealt with generally, in the Baltimore County Court, upon submission only, without the formal pleas, issues and verdicts of trials, and, of course, without juries. Passing on fifty years beyond the records just cited, to those of 1743, we find that in August Ann Patty, "Askt how she wold Acquitt herself of the matters whereof she stands presented [bastardy], confessed she is guilty thereof and humbly submitts herself to the Grace of the Court." John Spurgeon, on the other hand, charged with selling liquor without a license, "appears and humbly submits himself to the Grace of the Court here, whereupon all and singular the premises &c. considered and by the Court fully understood it appears that there is no cause of presentment against the said John, he is accordingly discharged." The said John on a similar charge at another day "being asked as the manner in how he wold acquit himself of the Premises afd. confessed he is guilty thereof and humbly submits himself to the Grace of the Court here." In the records of the same court for 1750, there are many instances of acquittal upon submission, or, as the heading in each case has it, "Acquit by Submission." At the June Court, Lawrence Cox, presented on a charge of breach of the peace, by assault and beating, "being demanded how he will acquit himself of the matter

wherof he stands presented he the said Lawrence protesteth that he is innocent but humbly submits himself to the Grace of the Court here. Whereupon the said Lawrence is discharged, paying the several officers of this Court their several and respective fees," etc. The same entry is made in the cases of Richard King Stevenson and Talbot Risteau, on charges of assault, and in that of Peter Whiteaire on a charge of ill-using an orphan in his charge. In some cases in which guilt was not acknowledged submission was made without the protestation of innocence, as in Spurgeon's case in 1743. In the case of Henry Brereton, on a charge of stopping the main road, after noting the submission to the grace of the court, the record continues, "Therefore it is considered and adjudged by the Justices of the Court here that the said Henry Brereton is not guilty thereof whereupon he is accordingly discharged paying," etc., as above. And a similar entry of a finding of not guilty may be seen in the case of Benjamin Dunear, on a charge of assault. These instances will suffice; there are many others. No instance of jury trial upon a misdemeanor charge, at that time, has been found. When a jury trial was held on a charge of felony, the description of the case in the title would be, "Felony Acquit (or Convict) by Verdict."

The first instance of submission recorded in the Maryland Reports is that in the case of Jenifer *v.* The Lord Proprietary, 1 Harris & McHenry, 535, on appeal from a conviction in Charles County in 1769, on a charge of having collected excessive fees as sheriff. The report recites that the accused submitted to the Court and was fined a total of 6,763 lbs. of tobacco; that upon the submission, evidence was received as retailed in the report, and that, "The Court upon this evidence, gave judgment against the said Jenifer." Jenifer appealed, and the question argued was whether in such a case an appeal, as distinguished from a writ of error, would lie. The case was later stricken off the docket without decision. The report of another case, of about the same time, is somewhat more informing: Miller *v.* The Lord Proprietary, 1 Harris & McHenry, 543. It was on appeal from a conviction in the County Court of Prince George's County, in 1770, on a charge of throwing ballast into a channel of the Potomac River. Miller, according to the report, had "appeared in proper person, and submitted himself to the grace of the Court (under a protestation of innocence)." He was fined 50 pounds. The question mainly argued was whether proceeding by submission upon presentment was permitted under a penal statute which spoke only of bill,

plaint, or information; but there was argued, also, a question of the right to appeal upon submission in any case. Incidentally there was some discussion of the meaning and effect of the proceeding; rather scant discussion, evidently assuming the Court was thoroughly familiar with the practice. For the appellant, counsel urged that "the protestation excludes, in this case, any admission of his being guilty of the fact. He submits nothing in his defense, because he has no witnesses; but submits, that is, does not object to the Court's proceeding in what manner they think proper. In Plow. 276; Heath's Max. 26; Reg. Plac. 70, 71; 18 Vin. tit. Protestation, and in Co. Litt. 124 b, 126 a, it is said a protestation amounts to a plea. Suppose the appellant had suffered judgment to go against him in the Court below, by default (and these proceedings are very similar to judgments of that nature), . . ." "But it may, perhaps, be urged, the summary proceeding below saves expense; the merits may be tried with equal fairness, and, therefore, is beneficial to the subject. The argument is plausible, not legal." The Attorney-General, in his reply, remarked that "this was a more expeditious method of proceeding, and attended with less expense than a trial by jury." "It is a proceeding at common law which the directions of the Act does not affect. The invariable practice is in support of the proceedings, and a number of judgments must be set aside should this objection prevail." The court reversed the judgment without opinion. An instance of submission in the General Court, which after the Revolution succeeded to the powers of the Provincial Court, may be seen in State *v.* Tibbs, 3 Harris & McHenry, 83 (1791).

A statute passed in 1781, chapter 11, designed, as its preamble states, to relieve from costs all persons prosecuted on charges of which they were not guilty, included alike in its benefits any "person who may be prosecuted for any misdemeanor or offense, and discharged by the court on submission, or fined not exceeding one shilling current money, or prosecuted for any crime and acquitted on trial by jury."

The form of procedure seems to have been, clearly enough, that of the old English Courts, an instance of which is to be found as far back as a case in the Year Book of 9 Henry VI, 60a, in which, as the Chief Justice there said, the accused *posuit se in gratiam Domini Regis et petit se admittit per finem.* The formal entry given by Chief Justice Holt in the first year of Anne (Reg. *v.* Templeman, 1 Salk. 55), was *non vult contendere cum domina regina &*

pon. se in gratiam curiae. It was permissible to add a protestation of innocence, *protestando quod non culpabilis est.* Comyns' Digest, title Indictment, (K), Confession." And see 2 Hawkins, Pleas of the Crown, Ch. 31; 1 Chitty, Criminal Law, 431. From the scantiness of discussion of the practice in English law books it may be inferred that it was not often resorted to in England. And the effect which such a submission without contest should have upon the question of guilt seems to have been a matter of some uncertainty to old English lawyers. In the case in the Year Book of Henry VI it was decided that the submission did not amount to a confession and, so, preclude a subsequent plea of not guilty. Chief Justice Holt, in the case cited, again had to consider the meaning and effect of it, and held it inconclusive upon the question of guilt. Yet, as in Comyns' Digest, the practice was usually treated under the head of "Confession."

From the facts we have of the use of the proceeding in eighteenth century Maryland, it seems quite clear that the office of the submission was enlarged somewhat. The practice seems to have outgrown its theory, and to have become a common method of trying misdemeanor cases. In every record of the period examined so far, submission without an acknowledgment of guilt was treated as leaving the question of guilt to be investigated and determined; and prisoners found not guilty were discharged. The submission was made on arraignment, after presentment, there was no plea; but a protestation of innocence was common. And although there was no formal issue, and, strictly speaking, no verdict, the question of guilt or innocence was determined, and the judicial finding on it sometimes recorded. The remarks in Miller *v.* The Lord Proprietary, *supra,* that the accused submitted nothing in his defence, because he had no witnesses, and that the proceedings were similar to proceedings on default, seem hardly consistent with the general use of this form in misdemeanor cases where guilt was denied, and the acquittals upon findings of not guilty; nor do they seem consistent with the further remark, in the same case, that the merits might be tried with equal fairness, and that the proceeding was therefore beneficial to the accused. Nevertheless, the facts recorded seem to leave no escape from the conclusion that during the eighteenth century the proceeding upon submission, as actually managed, provided an acceptable trial of the question of guilt or innocence in misdemeanor cases. The reconciliation of inconsistent expressions, and, indeed, the analysis of the proceeding as then used, can await further knowledge. They

are not important for the purposes of this paper. What is important, is the fact that the hearing on submission, whatever may have been its nature and scope at that time, developed later into the modern court trial, in form as well as in substance, — the non-jury trial which is the subject of the present discussion.

An Act of 1787 (November Session, Chapter 34), prohibited the denial of jury trial upon any controverted question of fact. Another statute, 1793 (November Session), Chapter 57, provided submission should always be so far an admission of the crime or offence charged as to render the person submitting liable to the costs of prosecution. But after sixteen years' further experience it was provided by the Act of 1809 (November Session), Chapter 144, that, in view of the great saving in time and expense by the practice, the courts of criminal jurisdiction should "determine on the whole merits of the case which may be to the said courts respectively submitted," and that there should be no penalty of liability for costs from the mere submission.

Up to the passage of the Act of 1809, and for some time after, submission seems to have been resorted to chiefly in minor cases. At the March Term, 1823, of the Harford County Court, at Bel Air, James A. Buchanan and James W. M'Culloh, indicted for conspiracy to defraud a branch of the Bank of the United States, appeared, pleaded not guilty, and, according to a report of the trial subsequently prepared by Robert Goodloe Harper for the bank, "put themselves upon the court for trial, instead of the jury, under the Act of November, 1809 — Ch. 144.". The case was one of great importance at the time, and was hard fought. An appeal on a demurrer to the indictment is reported in 5 Harris & Johnson's Reports, 317. The published report of the trial remarks that "up to this time it [the Act of 1809] had been uniformly confined in practice, to those cases of petty offence, with a view to which alone it was no doubt enacted. The general impression among the few persons who recollected or had ever been apprized of its existence, probably was, that it was so confined in its terms. This it is believed is the first instance in which it has been applied to an offence of the higher class. Its true nature, character and tendency having now been made known, it may be expected that its repeal or material modification will be among the first cares of the Legislature." Harper seems to have been misinformed as to the hold the practice had in the State. There was no legislative interference with it, and it grew.

The proceedings and the discussion in the case of Rawlings *v.*

State, 2 Md. 201, give us some information on practice under the Act of 1809. The Rawlings case was tried below in 1851, a year before the Act of 1809 was superseded by another statute. The prisoner pleaded not guilty, "and submitted himself to the court for trial." The court found him guilty. There was no formal issue joined. The Court of Appeals said: "He invited no issue to his plea, as would have been the case if he had 'put himself upon the country.'" This was held to be usual upon submission, and proper. The practice of submission was said to be attended with advantages to the accused, as compared with a formal jury trial, in that upon submission the court had greater latitude in investigating and giving effect to the circumstances. "Indeed," said the Court of Appeals, "if this formal issue were allowed, it might have the effect, in most cases, on strict principles of pleading, of narrowing the scope of the court's inquiry, to such matters only as are recognizable by the jury, and thus deprive the accused of material advantages designed to be afforded by the legislature, in opening the whole case upon submission."

The legislature in 1852, Chapter 344, finally enlarged the proceeding to cover all offences, giving the courts of criminal jurisdiction power and authority "to try" any person upon any charge whatsoever, "although it may subject such person to the pains of death." And a revision and codification of the statute law of the State in 1860 brought a further provision, and the final one, now Section 549 of Article 27 of the Maryland Code of Public General Laws, 1924 Edition:

> Any person presented or indicted may instead of traversing the same before a jury, traverse the same before the court, who shall thereupon try the law and the facts.

There is also a provision in the State Constitution, Article 4, Section 8, originally inserted in 1864, that: "The parties to any cause may submit the same to the court for determination without the aid of a jury." Whether this applies to criminal cases is questionable. There has been no decision upon it. Cf. Lanahan *v.* Heaver, 77 Md. 605. Agreement of both parties has never been required for a criminal trial without a jury. The accused alone, by his election, may compel such a trial. League *v.* State, 36 Md. 257 (1872).

Inasmuch as, in some other jurisdictions, a question has been raised as to the consistency of the allowance of non-jury trial with constitutional requirements of jury trial, it may be well to make

note here of the provisions on that subject in the Constitutions of Maryland. Since 1776 the several constitutions of the State have provided, in the Declarations of Rights, that the people are "entitled to the common law of England, and the trial by jury, according to the course of that law" (Declaration of Rights, Art. 5); "that in all criminal prosecutions every man hath a right . . . to a speedy trial by an impartial jury without whose unanimous consent he ought not to be found guilty" (Art. 21); "that no man ought to be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property but by the judgment of his peers, or by the law of the land" (Art. 23). Since 1851 the constitutions have contained the further provision (now Art. 15, Sec. 5), that, "In the trial of all criminal cases, the jury shall be the Judges of Law, as well as of fact." No question has even been raised in Maryland as to the consistency of allowing trial without a jury when the accused desires it.

So in this State the practice is one of respectable age, and it seems to Maryland lawyers to be fully as natural a feature of the administration of criminal justice as does the jury trial. They have been quite unaware that there was anything extraordinary in it, and are always surprised when they learn that in other jurisdictions an accused cannot have a trial without a jury if he wishes it.

A docket of jury trials only is something of which Maryland lawyers can hardly conceive; and it would dismay them. It would slow down the court work greatly, and the courts would have to be multiplied to cope with the work. And, of course, the demands upon citizens for jury service would be increased.

Within the memories of living men far the greater number of trials in criminal cases in Baltimore City have been held before judges alone. A like experience is reported from the county courts. In the year 1924 over 90 per cent of all the cases tried in the Criminal Court of Baltimore City were so tried. A count made ten or twelve years earlier showed 70 per cent so tried, and this is probably the lowest percentage now likely in the course of any of the variations. Ordinarily two criminal courts are sufficient to care for the criminal dockets in the city, which has a population of nearly 800,000. At times there is not enough unfinished business for two courts, and one is able to keep up the work. It is ordinarily possible to give trials without any delay beyond such time as may be needed for preparation, and there are times when

the court seems too close on the heels of the Grand Jury, when the court is prepared to give trial on the day after indictment. For some years, now, only one jury panel has been kept in attendance upon the two criminal courts, and, even so, the jurymen spend much of their time sitting aside as spectators. Of the 1,500 criminal cases docketed during the four months of the January, 1925, Term of the Criminal Court of Baltimore City all except 177, mostly those last docketed, were disposed of before the final day of the term. Unquestionably this comparatively rapid disposal of business is due to the prevalence of trials without juries. There is no common length for trials in that form, of course, but they are very much shorter than jury trials. It seems safe to say, for a guess, that the non-jury trial of a given case requires no more than a third of the time which would be required to try the same case with a jury. This estimate is confirmed by lawyers familiar with the criminal court work.

It may be not amiss to add here that in Connecticut, under a statute, Chapter 267, Section 2 of the Public Acts of Connecticut of 1921, trials are now held before the court alone, at the election of the accused, and the clerk of the court in the city of Hartford reports that, "since this law went into effect some four years ago, there have been, roughly, about 70 per cent of the cases tried by the Court and about 30 per cent by the jury."

The reasons which prompt the choice of a trial before the Court in one case and another are, of course, many and various. Every imaginable reason for thinking that a particular prisoner would stand a better chance of acquittal on the particular charge by the judge presiding than by the jury, must sometimes come into play. Small advantages in strategy, the personality and disposition of the judge, or the makeup of the jury panel — all such considerations must influence the choice and incline counsel now one way and now another. But there are more important reasons. Fear of the effect of popular prejudice upon a jury, either because of the nature of the charge, or because of something connected with the accused personally, is a very frequent ground of choice. It is common for defendants with known bad records to prefer trial before the court alone. And when the crime has aroused anger in the community from which the jury is chosen, trial before the court is frequently preferred. For instance, a group of automobile bandits charged with having robbed a county bank, and having incidentally killed one of its officers, a crime which stirred not only the neighborhood, but the whole State besides, elected trial

before the court on the charge of murder; and all but one were found guilty of murder in the first degree. Charges of a revolting nature, as of crimes against women and girls, seem to be tried more frequently before the court. Trial before the court, again, has been preferred in cases in which it has been feared that newspaper discussion might render the jury impatient of any defense, or of some particular defense. Trial by the court offers an escape from some of the evils of "trial by newspaper," or, at least, some mitigation of them. Negro prisoners constitute a large proportion of the defendants in the criminal courts of Maryland, and they frequently prefer this method of trial to avoid any race prejudice in the jury box. Negro men charged with crimes against women commonly elect trial by the court alone. And it seems there are sometimes cases in which the judge's greater experience is expected to enable him to perceive a weakness in the case for the prosecution, or an element of strength in that for the defense, which might escape the perception of a jury.

Nearly all charges of minor crimes, in which the accused have no counsel, are tried in this way. The accused seem to feel that the judges will somehow give them more consideration and protection. And beyond doubt, in a large proportion of the minor cases, even those in which the accused have counsel, jury trials are rejected as too cumbersome, and likely to magnify the cases to the disadvantage of the accused.

Trial before the court alone is sometimes preferred when a defense is based mainly on a point of law, for the reason that in Maryland juries are judges of questions of law, as well as of questions of fact, uncontrolled by instructions from the court, and a decision on a distinct question of law cannot well be obtained except by submission of the whole case to the court — once the stage of demurrer or special plea has been passed.

And now as to the management of such a trial in actual practice. When the prisoner is arraigned, and has pleaded not guilty, he is asked by the clerk, "And how will you be tried, by the court, or by the jury?" This, of course, has to be explained to some defendants. In rare cases the court fails to get an election from the accused, and in these the practice is to order a jury trial. And after the prisoner has made his election he takes his place in the dock. In capital cases, or those in which the punishment may possibly be death, it is usual to provide two or three judges to sit in the case, and to this end it is necessary in advance of the day of trial to ascertain what the election will be. In the county courts

there are usually at least two judges ready to sit in all cases, but in Baltimore City, where only one judge regularly sits in a court, more preparation is needed, and counsel on both sides have an advance conference with the court so that the judge regularly assigned there may call in two other judges to assist. The law does not require that more than one judge sit in a capital case, or in any other; county judges have sat singly in capital cases, and at one time in Baltimore judges were elected to single courts, and thus so restricted that none could go into the criminal court to assist. A judge may in any case ask others to assist, and in Baltimore the other judges customarily comply with such a call without hesitation. But in all non-jury cases, even murder cases in which a verdict of murder in the first degree is not to be considered, judges in Baltimore ordinarily sit singly. A conspicuous exception occurred in 1922, when for the trial of an important case, on a charge of conspiracy to obstruct justice, the judge regularly assigned to the criminal court had four other judges sit with him. The vote of a majority of the judges who sit on a criminal case determines the verdict; unanimity is not required as with a jury. (League *v.* State, 36 Md. 257.)

The trials are usually less formal than trials before juries, and, of course, quicker. There is no delay in selection of the tribunal, often opening statements are omitted as unnecessary, the evidence is more direct and concise, and there are fewer objections or other interruptions. The judges as they go along ask questions to clear up matters for themselves. They may, without inconvenience, interrupt a trial and hold it open for days until other witnesses they might like to hear are hunted up. They may hold it under advisement for days, after all the evidence is in, to reflect upon it. Sometimes the examination of witnesses suggests the existence of additional evidence which may go right to the point of final difficulty in the judge's mind, and where the evidence may be on the side of the accused the judge is especially careful to bring it into the case. For instance, a negro tried for complicity in a robbery, and identified as a participant, seemed to expect conviction, but yet earnestly denied that he was present. During some questioning by the court it appeared that the man had not fully understood the requests previously made of him for the names of witnesses in his favor, and the trial was suspended for a week to get any witnesses he might desire. The witnesses came, and gave such strong testimony of the prisoner's presence elsewhere at the time of the commission of the crime that the prosecuting witness

declared he was afraid he might have been misled by a resemblance. The man was, of course, acquitted.

Arguments on the facts are often omitted in the courts of Baltimore City in these cases, too often, perhaps. The judges sometimes have to call for the assistance of argument.

There is some difficulty in the situation which results from a difference in the elections of two or more persons jointly indicted, and who should be tried jointly. In Baltimore City it had been the practice to hold the joint trial unaffected by the difference; the judge and the jury had been hearing the evidence of the witnesses once for all, and while the jury was out, determining its verdict as to defendants who had elected a jury trial, the judge rendered his verdict as to the remainder. But in the case of McClelland *v.* State, 138 Md. 533, the Court of Appeals disapproved this practice. So, the right to elect the form of trial carries with it a right to compel a severance and separate trials in any case on joint indictment. The tactical resources of defendants are, of course, added to by this.

Of course, a trial before the court throws a greater burden on the judge than he ordinarily has in a jury trial, and an election of the latter form sometimes brings him a welcome respite. However, counsel on both sides ordinarily conduct a non-jury trial in a spirit of helpfulness to the court.

CARROLL T. BOND.

BALTIMORE, September, 1925.

IV.

LETTER FROM THE CHIEF CLERK OF THE STATE'S ATTORNEY'S OFFICE, BALTIMORE.

OCTOBER 31, 1925.

FRANK W. GRINNELL, Esq., *Secretary, Judicial Council, Commonwealth of Massachusetts.*

DEAR SIR: — . . . You ask that I give you some information as to the practical working of the system of election, or reasons as far as I have observed why defendants choose a trial by a judge or a jury, in what kind of cases and in about what proportion the jury or the court trial is chosen by white or colored defendants. Most of our cases originate at the station house (where a

police magistrate presides) where, after the arrest, the accused is brought before the magistrate, and, if a minor offense over which the magistrate has jurisdiction, he inquires of the accused whether he elects to be tried before him or by a jury. If the election is "by the magistrate" (and a jury trial has not been prayed by the State) the magistrate proceeds to try the same, and his judgment is final, except in those cases (the judgment being guilty) where by law the accused would be entitled to appeal to the criminal court. In all felony cases, or where a felonious intent is involved, as well as some other offenses excluded by law, the magistrate can give the accused a preliminary hearing only, for the purpose of ascertaining whether or not a prima facie case exists, and if he is of the opinion that a prima facie case has not been established it is within his power to dismiss, while, if in his judgment a prima facie case has been made out, he either commits the accused to jail or accepts bail pending the action of the Grand Jury. In due course the matter reaches the Grand Jury (which is a continuous body, being in session twelve months of the year) before which the State's witnesses appear, and if that body by its action dismisses the case, the accused, of course, is released, and if it votes for presentment, the commitment or "recognizance" is stamped presented, sent to the State's Attorney, where and by whom the indictment is prepared and returned to the body for "true bill." Within a few days the case is assigned for trial in the criminal court, at which time and place his election is made, and at this point I might say that it does not follow because the accused prayed a "jury trial" before the magistrate, he must make the same election in the criminal court; he can, if he cares to, and many times he does, change his prayer from jury to court.

Now as to the reasons why the election is the one or the other would, at the most, be inferential, based upon my observation. But after eighteen years' association with the criminal courts and lawyers who almost daily frequent the same, I venture to say that the high percentage of court trials is due largely to the splendid personnel of the Bench in Baltimore City (and I am just as certain that this is true with reference to the entire State) where we enjoy the privilege of having judges whose ability and integrity are of the highest standard, and whose treatment of all matters concerning the life, liberty and property of the people has stamped upon the minds of the general public, as well as the members of the Bar, a "guarantee" that all matters brought

before them are decided in a fair, impartial and conservative manner. Then, again, there are times, and I am now speaking of the criminal courts, where a case presented is one almost entirely confined to questions of law rather than fact, and counsel, appreciating trained legal and analytical mind of the judge, naturally elect a court trial in preference to a jury, which, as we all know, is composed mostly of laymen, who are not conversant with the intricate and technical interpretations of the law. In Maryland, as you no doubt know, the jury is the judge of the law as well as the facts. I might mention, also, that it depends many times upon the judge presiding as to just what the election might be. I do not mean to convey, however, that one judge might not be as fair and impartial as another, but that the policy of one judge with reference to a certain class of cases might differ materially with that of another, and counsel, quick to learn this, naturally make their election, as they feel, advantageous to their client.

In my opinion, based purely upon observation, I would say that the election of jury trials is made many times because the defendant, realizing that upon the law and the facts he is guilty with small chance of escape before the court, figures that he can fare no worse before a jury and that there is even a chance of "bamboozling" the jury to at least cause a disagreement and perhaps an acquittal. I personally know in some cases this very thing has happened. To better illustrate this, I know of cases where the defense has been willing to plead guilty upon a compromise sentence, and after refusal by the State to accept same, go to trial before a jury and there obtain an acquittal. Fortunately, this is by far the exception rather than the rule.

It is interesting to note how a new jury is surveyed, because almost from the very beginning of its service it is classed either a "defense jury" or a "state jury," and I do not mean by that that the jurors making up a panel have any feeling toward the one or the other, but just have a natural tendency either for the State or for the defense. You can, therefore, see how this would and does control the elections. I have also seen lawyers ready to begin trial of their cases undecided as to whether to go to trial before the court or jury, and when the clerk asks the election, without a single motive, they would take a "gambler's chance," elect one or the other, and if an acquittal, feel right proud, and if a conviction, well, perhaps, they had made a mistake.

This condition, as narrated, both as to court and jury trials,

applies to minor as well as major offenses, and the white and colored percentage is about the same, proportionately.

I cannot tell you the results in the prosecuting departments of other counties in Maryland, as each county has its own official family, so to speak. And there would be no central body which could give you information concerning the State as a unit.

Trusting this will in some measure prove helpful, I am

Yours very truly,

ELMER J. HAMMER,
Chief Clerk.

BALTIMORE, MD., November 3d, 1925.

You speak of 176 jury trials, while my records show 180, classified as follows [for the year 1924]:

Abortion	1
Assault to murder, etc.	11
Assault to rape	2
Bastardy	6
Burglary	8
Carnal knowledge	2
Conspiracy	6
Deadly weapon	1
Desertion	13
Disorderly house	1
Emblezzlement	3
False pretences	21
Gambling, etc.	14
Larceny	23
Liquor no license	7
Miscellaneous	9
Murder-manslaughter	25
Obstructing justice	1
Rape	13
Robbery	12
Vagrant	1
Total	180

There were also 28 cases of murder tried before the court without a jury.

E. J. H.

V.

THE STATE OF CONNECTICUT vs. CHARLES G. RANKIN.

First Judicial District, Hartford, January Term, 1925.
WHEELER, C.J., BEACH, CURTIS, KEELER and KELLOGG, Js.
Argued January 9th — decided February 23d, 1925.

Information for procuring an abortion, brought to the Superior Court in Hartford County and tried to the court, *Booth, J.*; judgment of guilty, and appeal by the accused. *No error.*

Joseph F. Berry, for the appellant (the accused).

Hugh M. Alcorn, State's Attorney, for the appellee (the State).

WHEELER, C.J. The information charges the accused with the crime of abortion. He was bound over to the criminal term of the Superior Court held on September 16th, 1924. On September 17th, 1924, the accused appeared in court, plead to the information 'not guilty,' and at the same time elected to be tried by the court instead of the jury, pursuant to the provisions of Chapter 267, § 2, of the Public Acts of 1921, which provides: "In all criminal cases, prosecutions and proceedings the party accused may, if he shall so elect when called upon to plead, be tried by the court instead of by the jury; and in such cases the court shall have jurisdiction to hear and try such cause and render judgment and sentence thereon." For the accommodation of the counsel for the accused, the date of trial was set for October 7th, 1924, the judge then informing counsel that this was the last date at which the trial could be set, as he was assigned elsewhere on the following October 10th, and that on this date the criminal court room would be otherwise occupied. On October 3d, 1924, counsel for the accused filed in writing a "Withdrawal of Election to Trial by the Court", and on October 7th, at the opening of court at 10 A.M., he orally argued his motion for withdrawal, basing his reasons upon the grounds that he had the right to a jury trial and did not elect to be tried by the court. No reason was given or cause shown for the withdrawal of the election. The court announced its decision in these words: "I presume the defendant, having elected to be tried by the court, would have the right to withdraw that election and be tried by the jury, if the court approved it. Whether or not his constitutional right to a jury trial is such that he can, at any time, and for no reason at all, withdraw it, I should have my doubts. I should not hesitate about granting the withdrawal in

this particular case if we had a jury, but the result of the request to withdraw the election of trial by the court is equivalent to a motion for postponement, and unless there is some other reason shown than has appeared so far, why, I should not grant it." At this time the witnesses for the State were in attendance, but upon counsel for the accused stating that he was not prepared to proceed at that time, the court continued the hearing until 2 P.M., at which hour the trial proceeded and continued into the following day. The accused offered a large number of witnesses in his behalf, all of whom had been previously notified to appear. Before the hearing of the evidence counsel for the accused made objection to all evidence introduced by the State on the ground that the court had no right to proceed with the trial without a jury as prescribed by the United States and State Constitutions, and upon the further ground that the court had no power to convict the accused when he requested that he be tried by a jury and did not elect to be tried by the court.

We think the accused's motion for the correction of the finding, by striking from paragraph six the clause as to the apparent purpose of the accused in his motion being to secure the continuance of the cause to the next term of court, and by striking from paragraph seven the clause that he suffered no prejudice as a result of the denial of his motion, should have been granted. These corrections do not make a new trial necessary, since we are of the opinion that the ruling made by the court upon the facts found exclusive of these was not erroneous.

The Act under which the accused elected to be tried by the court, and the court heard the cause and rendered judgment thereon, is, with an immaterial change, a copy of Chapter 56 of the Public Acts of 1874, which was declared constitutional in State *v.* Worden, 46 Conn. 349. The accused therefore had the right to waive a trial by jury and elect to be tried by the court. Hallinger *v.* Davis, 146 U. S. 314, 13 Sup. Ct. 105; State *v.* Worden, *supra.* "The Constitution, in providing that the right of trial by jury should remain inviolate, was designed to perpetuate its essential characteristics, as they existed at common law; preserving its substance, while leaving its form to be regulated from time to time as the legislative power might deem the public interests to require." State *v.* Main, 69 Conn. 123, 131, 37 Atl. 80.

The accused had the right to a trial by jury; his election to be tried by the court, when put to plead, was his own voluntary

act and a relinquishment of his right to a jury trial at the time when, by the Act, he was called upon to plead. Withdrawal thereafter of his election by the accused could not be had as matter of right. Hallinger *v.* Davis, 146 U. S. 314, 13 Sup. Ct. 105; State *v.* Worden, 46 Conn. 349; State *v.* Almy, 67 N. H. 274, 28 Atl. 372. If the withdrawal could be exercised as one of right, it would follow that it could be exercised at any time and under any conditions. If the right could be exercised once, it could be repeated an indefinite number of times. Speedy determination of criminal causes is almost as essential as their right determination. The right to elect and then withdraw the election, and repeat this at will, would give the accused the opportunity to postpone the cause indefinitely. The administration of justice in criminal causes requires a rule which does not lead to such a result. The rule that an accused, having made his election under a statute similar to ours, cannot, as matter of right, thereafter withdraw it, has been approved in a number of cases. McClellan *v.* State, 118 Ala. 122, 23 So. 732; Edwards *v.* State, 45 N. J. L. 419; Logan *v.* State, 86 Ga. 266, 12 S. E. 406; State *v.* Bannock, 53 Minn. 419, 55 N. W. 558.

The court may permit the withdrawal, in the exercise of its discretion. Wadkins *v.* State, 127 Ga. 45, 56 S. E. 74. Such a discretion is a reasonable one in the light of the circumstances. If the application for such withdrawal be made seasonably, that is, so that the withdrawal will not unreasonably delay the cause, or impede justice, or otherwise prejudice the State, the court should permit it; whether the court shall do so is for its sound discretion, and its decision will not be reversed unless the discretion so exercised has been unreasonably exercised. Cain *v.* State, 102 Ga. 610, 29 S. E. 426; Butler *v.* State, 97 Ga. 404, 23 S. E. 822.

The authorities upon which appellant relies do not, as a rule, support the accused's position. We refer to three of these cases upon which most reliance is placed. People *v.* Molinet, 13 Misc. 301, 34 N. Y. Supp. 1114, was decided upon the provisions of the New York criminal code which were unlike the statute under which the appellant demanded the right to withdraw. People *v.* Standish, 185 Ill. App. 485, 487, was a clear case of an abuse of discretion, that is, a failure to exercise a reasonable discretion. The accused had made his election prior to his arraignment, and prior to his arraignment counsel for the accused asked leave to withdraw his election. The court in deciding this point said:

"We think that under the circumstances the court erred in denying defendant's motion and in effect denying a trial by jury to the defendant." The motion was seasonably made and no impediment of justice is found in the record as likely to follow the granting of the application. In State *v.* Touchet, 33 La. Ann. 1154, it was held that an accused cannot be deprived of his right of revocation on timely application. "The only limitation," says the court, "on his right would be that his application should be timely — that is, made in such season as not substantially to delay or impede the course of justice." The case supports fully the position we have taken.

No facts appear upon this record indicating any ground for the withdrawal of the election of the accused to be tried by the court. The jury had been discharged for the term by the court in reliance upon the election of the accused to be tried by the court, and the cause continued to the last possible date when the trial could be had, when, four days before the date of trial, the accused filed his motion for withdrawal of his election to be tried by the court. In considering such a motion, regard must be given to the time when the motion is made, to the inconvenience caused the State's attorney and the court by the delay, to the effect upon the State's preparation, and to the additional expense caused the State. If a withdrawal can be made at so late a day under such circumstances as were present in this case, it must necessarily cause the State added expense, and added effort in making its preparation, and in all probability be likely to impede justice. The court has not expressly so found, but it is apparent from the facts as found that there was no reasonable opportunity for summoning a jury and trying the case at the existing term of court, and that the granting of the motion would have necessitated a continuance of the case. Under such circumstances, we cannot hold as matter of law that the court exercised its discretion wrongly; on the contrary, we are of the opinion that its denial of the motion was a reasonable exercise of its discretion.

There is no error.

In this opinion the other judges concurred, except KELLOGG, J., who concurred in the result, but died before the opinion was written.

VI.

CIRCULAR LETTER OF THE ADMINISTRATIVE COMMITTEE OF THE DISTRICT COURTS, CREATED BY ST. 1922, C. 532.

The Commonwealth of Massachusetts

ADMINISTRATIVE COMMITTEE OF DISTRICT COURTS.

MAY 19, 1925.

To the Justices and Clerks of the District Courts.

The enactment of chapter 297 of the Acts of 1925 makes necessary the adoption of methods for carrying out the terms thereof. Your committee has been requested by the Executive Committee of the Association of Justices of the District Courts of Massachusetts and by the Registrar of Motor Vehicles to formulate and recommend such methods.

We treat the matter in somewhat analytical manner, as follows:

I. PRELIMINARY TO RECEIVING COMPLAINTS AND ISSUING WARRANTS.

The act requires the magistrate or other officer receiving a complaint to communicate with the office of the Registrar of Motor Vehicles for the purpose of determining whether the alleged offender has been finally convicted of a like offence by a court or magistrate of the Commonwealth within a period of six years immediately preceding the commission of the offence of which he stands charged, and if so, that the complaint shall contain an averment to that effect, specifying the court or magistrate and the date of the conviction.

(*a*) This duty clearly can be delegated. The inquiry of a police officer, constable, member of the State constabulary or inspector appointed by the Registrar may be accepted by the person receiving the complaint, the party being thereby constituted agent for the specific purpose.

(*b*) In all cases, before issuing a warrant, there should be filed with the person receiving the complaint a written statement setting forth the fact of the inquiry and the information obtained (Form I).

(*c*) A person receiving a complaint from an inspector appointed by the Registrar should issue a warrant upon the filing of such statement (Form I) even though the information has been ob-

tained by telephone, but should decline to act in all other cases unless the information has been secured in writing (letter, record or telegram) or unless there is a record of the defendant's final conviction in the court from which a warrant is sought.

II. After Issuance of Warrant and Arraignment.

(*a*) If defendant pleads "Guilty."

(1) No attested copies of a previous final conviction need be obtained, but the magistrate should not sentence without a written record from the Registrar's office.

(*b*) If the defendant pleads "Not Guilty."

(1) The case should be continued if necessary for the following purposes:

(*a*) To obtain attested copies of the court record of any prior final conviction.

(*b*) To summon parties who may identify the defendant.

(*c*) To procure a written record from the office of the Registrar.

(2) If the evidence does not sustain the allegation of second offence but does justify conviction of a first offence, the magistrate should enter judgment as follows:

"Guilty of driving under the influence of intoxicating liquor but not proven guilty of having been finally convicted of a like offence within six years prior to the date of the offence alleged herein" and sentence according to the statute.

(3) The provisions for inquiry, etc., found in the act are directory only. The Commonwealth should not be required to prove compliance therewith.

(4) It is of great importance that all information be in writing except as hereinbefore set forth.

(5) We are advised by Mr. Goodwin's office that it will be open for inquiry from 8.30 A.M. to 5 P.M. every day except Saturday, and on Saturday from 8.30 A.M. to 12 M. From 8.30 to 9 A.M. the telephone number is Liberty 2336 or 2348. After 9 A.M. Liberty 2334.

It is very important that abstracts of court records be transmitted to the Registrar without delay.

Attention is called to the fact that the minimum sentence for a first offence is two weeks. (In two recent cases special justices have imposed a sentence of ten days.)

We deem it proper to strongly urge that the law be so accepted and enforced that the intent and spirit thereof be executed in

spite of the obvious difficulties already disclosed in following the letter thereof.

While this communication is addressed to all the courts, it is probable that some of those in and about Boston may find other methods more expeditious, but we recommend the use of uniform blanks. A number of copies of this circular letter are enclosed herewith with the request that the justice receiving the same forthwith deliver them to the special justices and clerk of his court.

FRANK A. MILLIKEN.
JAMES W. McDONALD.
CHARLES L. HIBBARD.

FORM I.

.....Court of.....

To.....

This is to certify that at your request I have communicated with the office of the Registrar of Motor Vehicles as required by chapter 297 of the Acts of 1925 and have been informed that

....
(Name) (Address)

....
(Age) (License No.)

has no record
appears to have been finally convicted (under the name of .....) in the.....
Court on the.....day of.....A.D. 19.....

.....

FORM II. (Telegram.)

Registrar of Motor Vehicles, Commonwealth Pier, Boston.

Record requested under provisions of chapter 297 of the Acts of 1925.

....
(Name) (Address)

....
(Age) (License No.)

.....
Justice (Clerk) District Court of

.....

FORM III. (Letter of Inquiry.)

.....Court of.....

Registrar of Motor Vehicles.

SIR: — It is respectfully requested you furnish the record of

....
(Name) (Address)

....
(Age) (License No.)

under provisions of chapter 297 of the Acts of 1925.

.....

Justice (Clerk) of.....District Court.

FORM IV. (Form of Allegation.)

"Did operate a motor vehicle while under the influence of intoxicating liquor on a public way.

And the complainant aforesaid, on his oath aforesaid, further complains that the said.....was heretofore finally convicted of a like offence by the.....Court of ....., a court of said Commonwealth, within a period of six years immediately preceding said.....day of....., to wit, on the.....day of..... A.D. 19.....

APPENDIX B.

(Reprinted from Report of Secretary of the Commonwealth for the year ending November 30, 1924. P. D. 46, page 25.)

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE LAW, EQUITY, DIVORCE AND CRIMINAL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1924, IN COMPLIANCE WITH CHAPTER 221, SECTION 24, OF THE GENERAL LAWS, AS AMENDED BY CHAPTER 131 OF THE ACTS OF 1924 (NATURALIZATION BUSINESS NOT INCLUDED).

COUNTIES.	NUMBER PENDING AT BEGINNING OF YEAR.					NUMBER ENTERED DURING YEAR.				NUMBER ACTUALLY TRIED.					NUMBER DISPOSED OF BY AGREEMENT OF PARTIES OR BY ORDER OF COURT.			
	CIVIL CASES.				Criminal Cases.	CIVIL CASES.				CIVIL CASES.				Criminal Cases.	CIVIL CASES.			
	Jury.	Jury Waived.	Equity.	Divorce.		Jury.	Jury Waived.	Equity.	Divorce.	Jury.	Jury Waived.	Equity.	Divorce.		Jury.	Jury Waived.	Equity.	Divorce.
Barnstable	92	42	20	29	31	54	27	9	9	4	1	–	5	4	42	14	1	11
Berkshire	225	122	109	63[1]	63	175	79	28	2	18	7	7	17[3]	13	124	70[2]	6	3
Bristol	1,666	601	413	270[3]	768	683	157	107	9	77	49	47	19	40	461	198	6	–
Dukes	13	9	3	8	4	7	8	1	1	2	–	–	3	1	3	6	1	–
Essex	2,981	573	514	429	920	1,701	379	271	29	188	47	28	133	200	1,166	268	120	9
Franklin	205	81	174	57	14	136	33	28	17	22	5	15	30	6	104	27	10	4
Hampden	2,242	841	569	554	370	958	414	210	429	95	29	11	330	24	676	389	64	11
Hampshire	171	113	75	49	43	116	35	24	5	22	5	–	4	47	73	54	9	19
Middlesex	4,751	1,258	1,726	837	748	2,694	783	350	166	236	59	10	223	450	1,835	699	241	52
Nantucket	2	5	–	1	–	7	10	–	–	2	1	–	1	–	2	1	–	–
Norfolk	1,053	286	340	183	709	606	185	71	36	63	17	30	42	75	397	144	19	14
Plymouth	713	267	320	193	526	463	139	85	103	57	9	6	8	100	282	123	25	118
Suffolk	17,384	4,118	4,491	2,285	1,366	7,582	2,341	1,809	565	1,569	274	292	589	1,276	9,557	3,087	903	82
Worcester	2,918	617	431	368	635	1,717	475	237	41	239	60	29	167	194	1,091	333	105	21[4]
Total	34,416	8,933	9,185	5,326	6,197	16,899	5,065	3,230	1,412	2,594	563	475	1,571	2,430	15,813	5,413	1,510	344

Counties.	Number remaining Untried at End of Year.					Number wherein Verdict of Jury in Civil Cases has been set aside by Court on Ground it was Excessive.	Criminal Cases.				Number of Days during which Court has sat for Hearing.				
	Civil cases.				Criminal Cases.		Number of Indictments Returned.	Number of Appealed Cases Entered.	Number Disposed of Without Trial.	Number wherein New Trial has been Ordered.	Civil cases.				Criminal Cases.
	Jury.	Jury Waived.	Equity.	Divorce.							Jury.	Jury Waived.	Equity.	Divorce.	
Barnstable	103	51	28	22	40	–	24	22	33	–	–[5]	–	–	–	–
Berkshire	258	126[2]	122	45	67	–	55	46	84	–	29	–[6]	–	1	19
Bristol	1,811	511	467	202	853	2	399	803	1,077	–	109	31	5	6	55
Dukes	15	11	3	6	4	–	5	4	–	–	–[7]	–	–	–	–
Essex	3,529	524	648	307	1,118	–	552	1,230	1,384	3	261	38	19	–	161
Franklin	238	88	191	31	25	1	34	21	40	–	25	4	3	2	10
Hampden	2,404	788	660	464	592	–	131	310	195	–	186	34	12	35	53
Hampshire	189	99	83	30	80	–	81	97	91	–	23	1	–	1	46
Middlesex	5,694	1,229	1,835	495	947[4]	–	973	1,544	1,868	79	307	34	13	29	382
Nantucket	2	5	–	–	–	–	–	–	–	–	–	–	–	–	2
Norfolk	1,199	310	362	120	543	–	139	312	542	2	182	24	–	–	77
Plymouth	837	274	374	170	608	–	137	576	531	–	74	15	15	10	84
Suffolk	15,409	3,372	5,397	1,177	679	5	1,205	4,129	5,685	4	1,302	116	225[9]	105	965[10]
Worcester	3,305	699	534	213	877	1	521	1,635	1,720	–	222	43	22	17	149
Total	34,993	8,087	10,704	3,282	6,433	9	4,256	10,729	13,250	88	2,720	340	314	206	2,003[10]

[1] Including two libels for annulment.
[2] Including one case amended for equity.
[3] Including decrees pending nisi. Dismissed, 6; transferred to Probate Court, 4; decrees pending nisi, 1923, 45; decrees pending nisi, 1924, 3.
[4] In addition to this number 8 cases were transferred to the Probate Court.
[5] Unknown, owing to mixed sessions.
[6] Jury waived and equity cases, 15; jury waived, equity and divorce cases, 3.
[7] All classes four days.
[8] Indictments, 710; appealed cases, 237.
[9] Equity merit session for all counties in the Commonwealth; equity motion session for all counties in the Commonwealth; a justice in attendance every day except Sundays and legal holidays.
[10] Corrected figures.

TABLE PREPARED FROM CORRESPONDENCE BETWEEN CHIEF JUSTICE HALL AND THE CLERKS OF COURTS OF THE VARIOUS COUNTIES, SHOWING TIME BETWEEN DATE OF WRIT AND TRIAL AND MOST RECENT DATE OF WRIT IN JURY CASES TRIED. (TABLE PREPARED FEB. 13, 1925.)

COUNTY.	Average Time between Date of Writ and Trial Jury Cases.	Most Recent Date of Writ in Jury Case tried (not advanced).
Barnstable	1 year, 1 month	March 3, 1924
Berkshire	2 years, 9 months	April 13, 1923
Bristol:		
Taunton	3 years, 3 months	June 20, 1922
New Bedford	3 years, 9 months	Feb. 20, 1924
Fall River	3 years, 5 months	Oct. 31, 1923
Essex	3 years, 2 months	April 2, 1923
Salem	3 years, 7 months	Aug. 10, 1922
Lawrence	3 years, 2 months	July 18, 1922
Newburyport	2 years, 9 months	April 2, 1923
Franklin	6 months	June 27, 1924
Hampden	2 years, 5 months	Sept. 1923
Hampshire	10 months	Oct. 15, 1924
Middlesex:		
Cambridge	2 years	Dec. 8, 1923
Lowell	1 year, 4 months	July 12, 1924
Norfolk	1 year, 1 month	May 21, 1924
Plymouth	2 years, 1 month	Nov. 24, 1923
Suffolk:		
General list	2 years, 5 months	Dec. 28, 1922
Special list	2 years, 1 month	June 5, 1923
Worcester:		
Worcester	2 years, 8 months	Oct. 11, 1922
Fitchburg	1 year, 8 months	Sept. 22, 1923

TABLE SUPPLIED BY CHIEF JUSTICE HALL, SHOWING ANALYSIS OF TABULATED RETURNS OF CLERKS OF COURTS TO THE SECRETARY OF THE COMMONWEALTH FOR THE YEAR ENDING JUNE 30, 1924, REPRINTED ABOVE (NOT INCLUDING DUKES COUNTY AND NANTUCKET.)

Jury Cases.

12 COUNTIES.	Pending, Beginning of Year.	Untried at End of Year.	Increase or Decrease.	Per Cent of Increase or Decrease.
Barnstable	92	103+	11+	11.8+
Berkshire	225	258+	33+	14.6+
Bristol	1,666	1,811+	145+	8.7+
Essex	2,981	3,529+	548+	18.3+
Franklin	205	238+	33+	16.0+
Hampden	2,242	2,404+	162+	7.2+
Hampshire	171	189+	18+	10.5+
Middlesex	4,751	5,694+	943+	19.8+
Norfolk	1,053	1,199+	146+	13.8+
Plymouth	713	837+	124+	17.3+
Suffolk	17,384	15,409−	1,975−	11.3−
Worcester	2,918	3,305+	387+	13.2+
Total	34,401	34,976+	575+	1.6+

Jury-Waived Cases.

Barnstable	42	51+	9+	21.4+
Berkshire	122	126+	4+	3.2+
Bristol	601	511−	90−	14.9−
Essex	573	524−	49−	8.5−
Franklin	81	88+	7+	8.6+
Hampden	841	788−	53−	6.3−
Hampshire	113	99−	14−	12.3−
Middlesex	1,258	1,229−	29−	2.3−
Norfolk	286	310+	24+	8.3+
Plymouth	267	274+	7+	2.6+
Suffolk	4,118	3,372−	746−	18.1−
Worcester	617	699+	82+	13.2+
Total	8,919	8,071−	848−	9.5−

Equity.

12 Counties.	Pending, Beginning of Year.	Untried at End of Year.	Increase or Decrease.	Per Cent of Increase or Decrease.
Barnstable	20	28+	8+	40.0+
Berkshire	109	122+	13+	11.9+
Bristol	413	467+	54+	13.0+
Essex	514	648+	134+	26.0+
Franklin	174	191+	17+	9.7+
Hampden	569	660+	91+	15.9+
Hampshire	75	83+	8+	10.6+
Middlesex	1,726	1,835+	109+	6.3+
Norfolk	340	362+	22+	6.4+
Plymouth	320	374+	54+	16.8+
Suffolk	4,491	5,397+	906+	20.1+
Worcester	431	534+	103+	23.8+
Total	9,182	10,701+	1,519+	16.5+

Divorce.

Barnstable	29	22−	7−	24.1−
Berkshire	63	45−	18−	28.5−
Bristol	270	202−	68−	25.1−
Essex	429	307−	122−	28.4−
Franklin	57	31−	26−	45.6−
Hampden	554	464−	90−	16.2−
Hampshire	49	30−	19−	38.7−
Middlesex	837	495−	342−	40.8−
Norfolk	183	120−	63−	34.4−
Plymouth	193	170−	23−	11.9−
Suffolk	2,285	1,177−	1,108−	48.4−
Worcester	368	213−	155−	42.1−
Total	5,317	3,276−	2,041−	38.3−

Criminal.

12 Counties.	Pending, Beginning of Year.	Untried at End of Year.	Increase or Decrease.	Per Cent of Increase or Decrease.
Barnstable	31	40+	9+	29.0+
Berkshire	63	67+	4+	6.3+
Bristol	768	853+	85+	11.0+
Essex	920	1,118+	198+	21.5+
Franklin	14	25+	11+	78.1+
Hampden	370	592+	222+	60.0+
Hampshire	43	80+	37+	86.0+
Middlesex	748	947+	199+	26.6+
Norfolk	709	543−	166−	23.4−
Plymouth	526	608+	82+	15.5+
Suffolk	1,366	679−	687−	50.2−
Worcester	635	877+	242+	38.1+
Total	6,193	6,429+	236+	3.8+

ANALYTICAL TABLE SUPPLIED BY CHIEF JUSTICE HALL, BASED ON RETURNS OF CLERKS OF COURTS, YEAR ENDING JUNE 30, 1924, REPRINTED ABOVE. CASES PENDING AT END OF YEAR COMPARED WITH THOSE PENDING AT BEGINNING OF YEAR (DUKES COUNTY AND NANTUCKET NOT INCLUDED).

COUNTY.	Per Cent of Increase.	Per Cent of Decrease.
Barnstable:		
Jury	11.8	–
Jury-waived	21.4	–
Equity	40.0	–
Divorce	–	24.1
Criminal	29.0	–
Berkshire:		
Jury	14.6	–
Jury-waived	3.2	–
Equity	11.9	–
Divorce	–	28.5
Criminal	6.3	–
Bristol:		
Jury	8.7	–
Jury-waived	–	14.9
Equity	13.0	–
Divorce	–	25.1
Criminal	11.0	–
Essex:		
Jury	18.3	–
Jury-waived	–	8.5
Equity	26.0	–
Divorce	–	28.4
Criminal	21.5	–
Franklin:		
Jury	16.0	–
Jury-waived	8.6	–
Equity	9.7	–
Divorce	–	45.6
Criminal	78.1	–

County.	Per Cent of Increase.	Per Cent of Decrease.
Hampden:		
Jury	7.2	–
Jury-waived	–	6.3
Equity	15.9	–
Divorce	–	16.2
Criminal	60.0	–
Hampshire:		
Jury	10.5	–
Jury-waived	–	12.3
Equity	10.6	–
Divorce	–	38.7
Criminal	86.0	–
Middlesex:		
Jury	19.8	–
Jury-waived	–	2.3
Equity	6.3	–
Divorce	–	40.8
Criminal	26.6	–
Norfolk:		
Jury	13.8	–
Jury-waived	8.3	–
Equity	6.4	–
Divorce	–	34.4
Criminal	–	23.4
Plymouth:		
Jury	17.3	–
Jury-waived	2.6	–
Equity	16.8	–
Divorce	–	11.9
Criminal	15.5	–
Suffolk:		
Jury	–	11.3
Jury-waived	–	18.1
Equity	20.1	–
Divorce	–	48.4
Criminal	–	50.2

County.	Per Cent of Increase.	Per Cent of Decrease.
Worcester:		
Jury	13.8	–
Jury-waived	13.2	–
Equity	23.8	–
Divorce	–	42.1
Criminal	38.1	–
Total all counties except Dukes and Nantucket:		
Jury	1.6	–
Jury-waived	–	9.5
Equity	16.5	–
Divorce	–	38.3
Criminal	3.8	–

Municipal Court of the City of Boston.

Entries, and Entries and Removals where Ad Damnum was over $2,000, January to and including Term of 24 October, 1925.

	Entered.	Removed.
Contract	17,040	844
Tort	3,587	158
All others	706	–
Totals	21,333	1,002

Entries.

At $5,000:		
Contract	87	
Contract or tort	8	
Tort	137	
		232
At $4,500:		
Contract	2	2
At $4,000:		
Contract	61	
Contract or tort	2	
Tort	63	
		126
At $3,600:		
Contract	2	2
At $3,500:		
Contract	9	
Tort	1	
		10
At $3,000:		
Contract	142	
Contract or tort	10	
Tort	134	
		286
At $2,500:		
Contract	33	
Contract or tort	3	
Tort	3	
		39
At $2,200:		
Contract	2	2
At $2,100:		
Contract	1	
Tort	1	
		2
At $2,005:		
Contract	1	1
Total		702

Removals.

At $5,000:		
Contract	36	
Tort	17	
		53
At $4,000:		
Contract	21	
Tort	1	
		22
At $3,500:		
Contract	3	
Tort	1	
		4
At $3,000:		
Contract	37	
Contract or tort	2	
Tort	6	
		45
At $2,500:		
Contract	12	
Tort	2	
		14
At $2,100:		
Contract	1	1
At $2,005:		
Contract	1	1
Total		140

Municipal Court of the City of Boston.

Summary of Civil Business for the Year 1924.

"Deft. D. Clerk" means that defendant was defaulted, under the general rule, by the clerk.
"Deft. D. Court" means that defendant was defaulted in court.

	Entered.	Removed.	Deft. D. Clerk.		Deft. D. Court.		Ints. Filed.		Marked for —		Trial Lists.				Findings.	
			Non-Appearance.	Non-Answer.	Non-Appearance.	Non-Answer.	To Plaintiff.	To Defendant.	Motion List.	Trial List.	Non-Suits.	Defaults.	Tried.	Reserved.	For Plaintiff.	For Defendant.
Contract	19,083	756	7,299	105	141	385	918	498	–	–	–	–	1,682	558	1,203	480
Tort	3,855	151	297	6	3	7	263	355	–	–	–	–	752	334	366	324
All others	882	–	239	–	1	–	–	–	–	–	–	–	202	26	176	29
Totals	23,820	907	7,835	111	145	392	1,181	853	6,706	19,001	266	3,206	2,636	918	1,745	833

Municipal Court of the City of Boston — *Concluded.*

Summary of Civil Business for the Year 1924 — Concluded.

	Appellate Division.													Appealed to Superior Court.	Judgments.						Original Executions Issued.	Executions renewed for December, 1924, *only*.
	Requests for Report.	Reports allowed.	Reports disallowed.	Reports proved.	Cases heard.	Cases decided.	Affirmed.	Reversed.	Modified.	Entire Re-trials ordered.	Partial Re-trials ordered.	Motions.	Appealed to Supreme Judicial Court.		Entered on Non-Suits and Defaults.	Entered on Trials.	Entered on Agreements.	Total Pltfs.' Judgments.	Amount, Pltfs.' Judgments.	Average (Per Action).		
Contract . .	133	78	14	2	57	66	51	5	1	7	2	2	10	–	9,958	1,610	2,257	13,608	$2,039,323 20	$149 86	10,809	252
Tort . . .	21	16	–	–	11	7	6	–	–	–	–	–	1	–	89	725	1,324	2,055	212,898 09	103 60	658	3
All others . .	23	11	2	2	11	7	6	1	–	1	–	–	3	11	216	194	53	438	4,169 88	9 52	336	–
Totals . .	177	105	16	4	79	80	63	6	1	8	2	2	14	11	10,263	2,529	3,634	16,101	$2,256,391 17	$140 13	11,803	255

Entries over $2,000 Ad Damnum.

At $5,000:	
Contract . . .	68
Contract or tort .	8
Tort	83
At $4,800:	
Contract . . .	1
At $4,500:	
Contract . . .	1
At $4,000:	
Contract . . .	30
Contract or tort .	2
Tort	20
At $3,500:	
Contract . . .	6
Tort	1
At $3,000:	
Contract . . .	153
Contract or tort .	7
Tort	135
At $2,600:	
Contract . . .	1
At $2,500:	
Contract . . .	38
Tort	11
Total . . .	565

Removals over $2,000 Ad Damnum.

At $5,000	24
At $4,800	1
At $4,000	10
At $3,000	49
At $2,500	8
Total	92

Poor debtor process	3,235
Equitable process after judgment	74

Municipal Court of the City of Boston.

Summary of Small Claims for the Year 1924.

[Under St. 1920, c. 553, now G. L., c. 218, §§ 21–25.]

	Actions entered.	Reported as settled out of Court.	Amount of Plffs.' Claims.	Notices mailed to Defts.	Notices returned, Acceptance refused.	Notices returned, unable to locate.	Notices to Plffs.	Counterclaims or Set-offs.	Amount of Counterclaims or Set-offs.	Answers. Defendants.	Answers. Plaintiffs.	Settled in Court before Hearing.	Hearings.	Settled in Court after Hearing.	Reserved.	Dismissals.	Transferred for Trial.	Removed to Superior Court.	Referred to Appellate Division.
Contract . .	1,114	208	$19,962 64	1,159	6	94	10	10	$317 90	427	11	47	366	48	5	22	–	10	–
Tort . . .	47	3	1,225 00	47	–	–	–	–	–	42	1	–	43	2	–	1	–	1	–
Totals . .	1,161	211	$21,187 64	1,206	6	94	10	10	$317 90	469	12	47	409	50	5	23	–	11	–

MUNICIPAL COURT OF THE CITY OF BOSTON — *Concluded.*

Summary of Small Claims for the Year 1924 — Concluded.

	JUDGMENTS.								NEITHER PARTY.				
	Entered on Defaults.	Entered on Non-Suits.	Entered on Hearings.	Total Plffs'. Judgments.	Amount, Plffs'. Judgments.	Total Defts'. Judgments.	Amount, Defts'. Judgments.	Judgments vacated.	Neither Party.	Counterclaims dismissed.	Counterclaims disallowed.	Plffs'. Exons. (Original).	Defts'. Exons. (Original).
Contract . . .	403	22	292	602	$10,045 49	93	$131 07	1	4	–	–	259	–
Tort	4	–	39	22	489 95	21	–	–	–	–	–	1	–
Totals . .	407	22	331	624	$11,135 44	114	$131 07	1	4	–	–	260	–

Results of Appeals in Civil Cases to the Supreme Judicial Court from the Appellate Division of the Municipal Court of the City of Boston from 1912 to November 1, 1925.

Appellate Division sustained	156
Appeal dismissed	7
Appeal waived	8
Appellate Division overruled	38
Total appeals in 13 years	209

Total Trials and Legal Reviews in Civil Cases in the Municipal Court of the City of Boston, 1922–24.

Date.	Total Entries.	Removals to Superior Court.	Tried.	Decided in Appellate Division.	Appealed to Supreme Judicial Court.
1922	19,948	476	2,201	106	10
1923	21,805	746	2,397	69	20
1924	23,820	1,907	2,636	80	14

Certain Criminal Statistics of the Municipal Court of the City of Boston.

(Taken from the Reports of the Commissioner of Correction, Pub. Doc. 115, for the years ending November 30, 1923, and November 30, 1924.)

Aggregate.

Date.	Criminal Cases pending at Beginning of Year.	Criminal Cases begun during Year.	Discharged, Nol-prossed, Dismissed, Placed on File (before Trial).	Pleas.		Findings.			Sentences Appealed to Superior Court.
				Guilty.	Not Guilty.	Guilty.	Not Guilty.	Bound Over.	
1923	120	34,238	423	12,219	6,946	16,954	1,624	465	1,576
1924	1,349	37,376	413	16,242	7,150	20,622	1,489	428	1,427

Tables showing the distribution of these aggregates among various classes of offenses will be found in the reports referred to. The figures above are reprinted here to show the total criminal business of the court.

Results of Appeals to Supreme Judicial Court from Appellate Divisions of District Courts, Other than the Municipal Court of the City of Boston, from September 30, 1923, to November 1, 1925.

Appeal dismissed	2
Appellate Division sustained	3
Appellate Division overruled	1
Total appeals	6

STATISTICS OF DISTRICT COURTS FROM SEPT. 30, 1923, TO OCTOBER 1, 1924.

Prepared by the Administrative Committee of the District Courts.

District Courts	Civil Writs Entered	Appeals, Civil	Removals to S. C.	Reported to App. Div.	Appealed to S. J. C.	Poor Debt. & Dubuq.	Small Claims	Insane	Crim. cases begun	Crim. Appeals	Drunkenness	Auto Cases		Int. liquor cases	Inquests	Juvenile cases under 17 years
												Operating under inf. of int. liquor	Total Automobile Cases			
Worcester, Central	3841	12	431	2	....	356	627	298	7676	1286	4490	138	1301	300	77	510
Springfield	2444	15	136	...6	....	168	1101	157	6800	172	1647	162	1714	455	28	392
Middlesex, First Eastern	2586	6	122	1	....	596	785	102	3698	151	1678	*	705	176	29	129
Roxbury	689	4	7	....	....	87	714	....	14686	996	5879	*	2253	778	20	697
Bristol, Third	1378	....	106	1	....	38	417	94	5426	357	1637	97	453	652	1	234
Middlesex, Third Eastern	2431	8	139	2	2	1207	788	141	9969	596	3601	*	2928	395	30	383
Dorchester	498	4	4	1	....	582	492	1	4444	252	1052	61	1865	229	1	233
Lowell	1076	1	68	3	....	55	631	131	4944	258	2525	124	501	340	48	143
Bristol, Second	1444	....	135	4	1	78	456	78	4639	301	1939	*	588	474	14	262
Essex, Southern	1912	11	149	2	....	376	898	102	5636	223	2091	88	1263	363	29	286
Lawrence	1359	1	124	....	....	60	114	57	2892	264	2535	101	457	278	15	176
Norfolk, Eastern	1423	5	62	....	....	362	747	66	4997	202	1428	171	1508	107	29	241
Somerville	1116	1	39	2	....	141	264	65	2696	238	1529	67	391	86	16	311
West Roxbury	194	1	1	1	....	35	191	....	4965	197	1293	*	2544	78	13	27
Essex, First	746	2	120	2	....	151	341	264	3143	321	1129	63	404	420	16	84
Brockton	987	3	78	2	....	144	555	81	3709	232	1667	82	316	173	33	249
East Boston	432	4	2	1	....	80	286	....	5424	218	3321	29	590	379	15	330
Chelsea	616	7	18	....	....	79	317	32	4029	340	1975	97	556	88	42	231
South Boston	256	1	5	....	....	15	125	....	9473	407	5858	45	886	404	24	318
Essex, Northern Central	533	....	82	1	....	45	238	18	1451	162	773	44	159	60	18	21
Holyoke	455	....	59	1	....	7	401	52	2065	28	932	34	207	184	10	122
Hampshire	315	1	12	....	....	10	520	203	1898	108	598	74	370	219	11	160
Middlesex, Second Eastern	744	3	45	1	....	55	413	69	2893	96	1271	76	708	131	36	172
Berkshire, Central	437	1	17	1	....	4	578	46	1541	23	547	42	203	156	7	148
Bristol, First	344	....	41	....	....	12	291	62	1354	72	580	57	173	107	28	71
Middlesex, Fourth Eastern	547	....	24	1	....	59	510	18	2557	85	760	102	1147	70	11	66
Newton	628	....	32	....	....	98	303	43	1997	190	698	79	606	43	18	139
Fitchburg	310	1	26	1	....	10	56	22	1715	80	1073	41	236	69	10	67

Lawrence	1359	1	124	....	....	60	114	57	2892	264	2535	101	457	278	15	176
Norfolk, Eastern	1423	5	62	....	....	362	747	66	4997	202	1428	171	1508	107	29	241
Somerville	1116	1	39	2	....	141	264	65	2696	238	1529	67	391	86	16	311
West Roxbury	194	1	1	1	....	35	191	....	4965	197	1293	*	2544	78	13	27
Essex, First	746	2	120	2	....	151	341	264	3143	321	1129	63	404	420	16	84
Brockton	987	3	78	2	....	144	555	81	3709	232	1667	82	316	173	33	249
East Boston	432	4	2	1	....	80	286	....	5424	218	3321	29	590	379	15	330
Chelsea	616	7	18	....	....	79	317	32	4029	340	1975	97	556	88	42	231
South Boston	256	1	5	....	....	15	125	....	9473	407	5858	45	886	404	24	318
Essex, Northern Central	533	....	82	1	....	45	238	18	1451	162	773	44	159	60	18	21
Holyoke	455	....	59	1	....	7	401	52	2065	28	932	34	207	184	10	122
Hampshire	315	1	12	....	....	10	520	203	1898	108	598	74	370	219	11	160
Middlesex, Second Eastern	744	3	45	1	....	55	413	69	2893	96	1271	76	708	131	36	172
Berkshire, Central	437	1	17	1	....	4	578	46	1541	23	547	42	203	156	7	148
Bristol, First	344	....	41	....	....	12	291	62	1354	72	580	57	173	107	28	71
Middlesex, Fourth Eastern	547	....	24	1	....	59	510	18	2557	85	760	102	1147	70	11	66
Newton	628	....	32	....	....	98	303	43	1997	190	698	79	606	43	18	139
Fitchburg	310	1	26	1	....	10	56	22	1715	80	1073	41	236	69	10	67
Norfolk, Northern	445	....	29	....	....	121	61	82	1648	66	470	56	726	89	11	87
Brighton	189	....	6	1	....	34	212	2	3428	170	1224	54	1167	117	17	145
Franklin	189	....	10	....	....	5	38	28	617	17	149	43	106	38	5	39
Worcester, First Southern	223	....	27	....	....	5	5	18	1019	49	345	36	212	24	3	30
Brookline	769	....	27	4	....	244	269	36	1581	69	321	44	672	43	4	136
Bristol, Fourth	177	2	22	2	....	15	219	24	974	38	338	69	251	48	8	81
Plymouth, Second	394	....	14	....	....	79	375	31	1920	107	635	147	589	55	4	52
Chicopee	212	....	22	....	....	10	57	26	1051	25	435	37	153	103	5	97
Worcester, First Northern	235	....	1	2	1	17	76	....	938	55	371	47	148	110	10	80
Charlestown	142	5	4	....	....	374	172	....	4842	315	2897	31	717	219	6	78
Middlesex, First Southern	418	....	31	2	....	51	246	18	955	39	311	25	214	32	10	45
Essex, Eastern	300	....	18	....	....	46	83	16	976	90	536	23	138	47	5	43
Norfolk, Western	180	....	7	....	....	26	27	51	918	38	181	42	371	57	7	38
Middlesex, Central	183	....	22	1	....	7	109	21	1057	85	391	61	373	16	1	34
Worcester, Second Southern	122	....	3	....	....	7	45	7	558	7	121	21	88	31	4	2
Hampden, Western	98	....	5	....	....	2	144	20	916	33	334	21	159	78	3	53
Berkshire, Northern	133	....	7	....	....	....	79	26	697	4	352	15	69	97	3	17
Marlborough	197	1	19	2	....	11	118	16	755	39	145	26	243	45	4	27
Worcester, Second Eastern	84	2	6	2	....	2	46	16	663	37	210	20	156	56	2	39
Newburyport	190	....	7	2	....	9	277	13	597	34	232	30	105	36	5	21
Plymouth, Third	192	....	....	....	....	23	205	9	511	21	137	24	119	15	9	41
Peabody	286	....	27	....	....	29	119	18	1908	19	509	29	154	98	4	120
Leominster	155	....	5	1	....	12	38	16	596	13	255	22	99	16	5	44
Worcester, Western	66	....	5	1	....	2	44	18	360	25	67	25	93	5	3	11
Worcester, Third Southern	85	2	15	....	....	....	102	16	355	8	101	5	50	8	10	9
Hampden, Eastern	46	....	1	....	....	....	6	21	481	54	94	32	151	86	4	52
Plymouth, Fourth	136	....	5	....	....	7	42	72	810	32	180	20	109	49	5	33

Peabody	286	....	27	....	....	29	119	18	1908	19	509	29	154	98	4	120
Leominster	155	....	5	1	....	12	38	16	596	13	255	22	99	16	5	44
Worcester, Western	66	....	5	1	....	2	44	18	360	25	67	25	93	5	3	11
Worcester, Third Southern	85	2	15	....	....	....	102	16	355	8	101	5	50	8	10	9
Hampden, Eastern	46	....	1	....	....	....	6	21	481	54	94	32	151	86	4	52
Plymouth, Fourth	136	....	5	....	....	7	42	72	810	22	180	36	199	49	5	32
Norfolk, Southern	157	....	5	....	....	30	41	6	481	16	155	25	114	24	4	28
Middlesex, First Northern	56	....	6	....	....	3	97	1	1012	15	103	24	522	47	5	3
Worcester, First Eastern	47	....	5	....	....	6	85	13	250	18	60	20	75	13	7	12
Berkshire, Fourth	78	2	....	....	....	2	190	....	487	3	102	*	67	36	2	40
Essex, Second	100	....	17	....	....	3	190	11	660	44	108	20	205	36	....	8
Barnstable, First	108	3	....	....	....	....	65	4	393	19	70	38	150	44	3	24
Barnstable, Second	127	....	2	....	....	9	47	9	264	17	20	12	76	25	2	21
Berkshire, Southern	54	....	2	....	....	....	130	9	383	14	80	15	157	19	2	8
Natick	133	....	....	....	....	4	60	8	465	13	179	20	158	17	4	21
Lee	18	....	1	....	....	1	150	9	205	3	49	20	90	14	2	38
Hampshire, Eastern	35	....	....	....	....	....	35	11	173	1	47	7	38	18	3	11
Franklin, Eastern	31	....	1	....	....	1	36	2	121	....	17	4	35	6	....	9
Essex, Third	27	....	1	....	....	3	49	8	281	....	115	14	68	23	5	28
Winchendon	28	....	4	....	....	1	24	3	159	3	54	3	16	13	1	6
Dukes County	17	....	1	....	....	1	154	5	158	2	11	2	40	16	...	10
Williamstown	....	....	....	....	....	....	44	6	89	2	12	3	15	8	1	7
Nantucket	2	....	....	....	....	....	50	....	121	....	19	5	44	1	....	19
	36405	109	2473	56	4	5912	17820	2928	133530	9504	67048	3127	34404	9192	827	7938

*Not reported separately

Appendix C.

DRAFTS OF LEGISLATION RECOMMENDED.

An Act to Further the Prompt Administration of the Criminal Law.

Be it enacted, etc., as follows:

Chapter four hundred and sixty-nine of the acts of nineteen hundred and twenty-three, amended by chapter four hundred and eighty-five of the acts of nineteen hundred and twenty-four, is hereby further amended by striking out section five thereof.

An Act to Provide for Election of Jury Trial in the Municipal Court of the City of Boston and a Review of Sentences there imposed.

Be it enacted, etc., as follows:

Section 1. Chapter two hundred and seventy-eight of the General Laws is hereby amended by inserting after section twenty-six the following new sections: —

Section 26A. On and after October first, nineteen hundred and twenty-six, when a defendant enters a plea of not guilty in the municipal court of the city of Boston, upon a complaint for a crime within the final jurisdiction of said court, or when a claimant enters a claim to property in process of forfeiture in said court, under chapter two hundred and fifty-seven of the General Laws, the court or clerk shall, forthwith upon such plea or the entry of such claim in the court, inquire of him whether he claims a trial by jury in the superior court or chooses a trial without a jury in the district court, and may make such explanatory statement as may seem to the court necessary or advisable for the information of the defendant or claimant. If a defendant or claimant elects to have a trial by jury his case shall be removed to the superior court. Election by a corporate defendant or claimant shall be made by its attorney of record or by the

person authorized to represent it by power filed with the clerk. Certified copies of the papers described in section thirty of chapter two hundred and eighteen and any security deposited on a recognizance in such case by a defendant who elects trial by jury shall be transmitted on or before the next return day to the clerk of the superior court. If such defendant is not under recognizance he shall be ordered to recognize in such form and with such surety or sureties, if any, as the court may require, with condition to appear in the superior court on such next return day and as further provided in section eighteen of chapter two hundred and seventy-eight and in default thereof he shall be committed to jail.

If such defendant or claimant does not so elect to have a trial by jury he shall be deemed to have waived the same. As to all defendants arraigned or claimants appearing in said municipal court on and after October first, nineteen hundred and twenty-six, there shall be no appeal from any decision or order of said court, except as provided in the four following sections, and the provisions for appeal contained in section twelve of chapter two hundred and seventy-three, sections four, eight and fifteen of chapter two hundred and seventy-five, section eight of chapter two hundred and seventy-six, and in section eighteen of chapter two hundred and seventy-eight shall not apply. Nothing herein shall affect the power of said municipal court under section thirty of chapter two hundred and eighteen.

Upon such removal said municipal court shall have like power to bind witnesses in the case by recognizance as it has by chapter two hundred and seventy-six when a prisoner is admitted to bail or committed.

If the defendant does not claim a trial by jury, the court at any time before trial may in its discretion certify that the case involves an issue of fact which should be tried by a jury and direct that the case be removed to the superior court in the same manner as if a jury had been claimed.

In any case removed under this section, a defendant at any time prior to the sitting in the superior court for criminal business next following the date of such removal may file in said municipal court a waiver of jury trial and request that his case be disposed of in said municipal court as if no claim for jury trial had been made or no removal directed by said municipal court, and the case shall then remain in said municipal court and be disposed of accordingly; but the defendant shall not thereafter be entitled

to claim a jury trial. If the case has been entered in the superior court, said municipal court shall notify the clerk of the superior court of the waiver of jury trial, who shall thereupon make a memorandum thereof upon the record of the superior court.

Section 26B. A defendant in a criminal case, or a claimant in such forfeiture proceedings, heard or tried in said municipal court, who is aggrieved by any ruling of a justice on a matter of law, may as of right have the ruling reported for determination by the appellate division of said court provided for by section one hundred and eight of chapter two hundred and thirty-one. The claim for a report shall be made known at the time of the ruling and reduced to writing and filed with the clerk forthwith after a finding of guilty or final action on interlocutory proceedings, or after an order of forfeiture. The justice making the ruling shall not sit upon the review thereof. If the appellate division shall find material error, it shall correct the same by such order as justice may require, otherwise it shall affirm the action of the single justice. The justice by whom a case is heard may, without being requested, report at any time any question of law therein for the consideration of the appellate division.

Section 26C. The municipal court of the city of Boston from time to time shall make and promulgate rules applicable to that court, regulating the procedure and sittings of the appellate division, for the preparation and submission of reports, the allowance of reports which a justice shall disallow as not conformable to the facts, or shall fail to allow by reason of physical or mental disability, death or resignation, in criminal cases.

Section 26D. The defendant or claimant may appeal from the final decision of said court by the appellate division thereof to the supreme judicial court. Claim of such appeal shall be filed in the office of the clerk of the municipal court within three days after notice is given by mail or otherwise of the decision of the appellate division to the defendant or his counsel. Copies and papers relative to the appeal shall be prepared by the clerk of the municipal court, and shall thereupon be transmitted to and entered in the law docket of the supreme judicial court as soon as may be after such appeal has been claimed. The entry in the supreme judicial court shall not transfer the case but only the question to be determined. The clerk of the municipal court shall forthwith, upon the transmission of the papers in such appeal, give notice thereof to the district attorney.

If the defendant or claimant neglects to enter his appeal in the supreme judicial court, or neglects to take the necessary measures for the hearing of the cause in the supreme judicial court, the municipal court by the appellate division thereof may, on application of the district attorney and after notice, order that the appeal be dismissed and the decision appealed from be affirmed.

Section 26E. There shall be a reviewing division of said municipal court for the review of sentences imposed in criminal cases. Any defendant complaining of a sentence not suspended under section one of chapter two hundred and seventy-nine may, upon claim thereof made at the time of order for its execution, which claim may be oral and shall be noted by the clerk, have the same summarily reviewed by the reviewing division which may make any disposition of the case that the justice imposing the sentence might have made. The defendant shall be notified at the time of such order of his right to claim such a review. No order shall be made for the commitment of a person to a jail or house of correction upon a sentence not suspended of more than six months imposed by said court, until at least one day after the imposition of the sentence. Before such order is made, he shall be notified of his right to claim a review of the sentence by the reviewing division. The reviewing division shall be holden by justices of said court not exceeding three in number, to be designated from time to time by the chief justice of said court, and the justice imposing the sentence may be included in the number. Two justices not including the justice imposing the sentence shall constitute a quorum to decide all matters in a reviewing division. A written statement by the justice imposing the sentence may be filed with the case, and if so filed shall be submitted to the reviewing division.

Section 26F. Sentence may be imposed upon conviction of a crime in said municipal court, although a report is claimed or the case reported. But a sentence imposed shall stand suspended pending review of a ruling or review of a sentence pursuant to sections twenty-six A to twenty-six E, inclusive, and the imposition of sentence shall not discharge bail or security. Pending review of a ruling or review of a sentence, cases shall be continued from time to time to a day certain, and no law limiting adjournments or continuances shall apply to such cases.

Section 26G. The provisions of the six preceding sections shall not apply to proceedings against juvenile offenders under chapter one hundred and nineteen and sections fifty-seven to sixty of chapter two hundred and eighteen.

SECTION 2. Section sixty-five of chapter two hundred and seventy-six of the General Laws is hereby amended by adding at the end thereof the following: — The condition of a recognizance to appear before the municipal court of the city of Boston, on or after October first, nineteen hundred and twenty-six, shall further bind the defendant personally to appear as well in the superior court, in case of removal to that court, on the next return day after such removal and at any subsequent time to which the case may be continued, — so that the same shall read as follows: —

Section 65. The condition of a recognizance of a person, either with or without surety, binding him to appear before a court or justice to answer to a charge against him or to prosecute an appeal shall be so framed as to bind him personally to appear at the time so expressed, and at any subsequent time to which the case may be continued, unless previously surrendered or discharged, and so from time to time, until the final decree, sentence or order of the court or justice thereon, and to abide such final sentence, order or decree, and not depart without leave.

The condition of a recognizance to appear before the municipal court of the city of Boston, on or after October one, nineteen hundred and twenty-six, shall further bind the defendant personally to appear as well in the superior court, in case of removal to that court, on the next return day after such removal and at any subsequent time to which the case may be continued.

SECTION 3. Section twenty-two of chapter two hundred and twelve of the General Laws is hereby amended by inserting after the word "appeals" in the second line thereof and after the word "appeals" in the fourth line thereof the words: — or removals, — so that the same shall read: —

Section 22. The first Monday of every month shall be a return day for the entry of appeals and removals in criminal cases from district courts and trial justices and of suits upon recognizances and bonds in such cases. Such appeals and removals shall be entered on the return day next after the appeal is taken. Such suits may be made returnable at the election of the district attorney at any such return day within three months after the date of the writ. Trials by jury of such suits shall take place at criminal sittings; and such suits shall be filed, docketed and recorded as criminal cases. If said first Monday is a legal holiday, such entry shall be made on the day following.

SECTION 4. Section eighteen of said chapter two hundred and seventy-eight is hereby amended by inserting after the word

"Whoever" in the first line the words: —, having been arraigned in the municipal court of the city of Boston prior to October first, nineteen hundred and twenty-six, or before any other district court or a trial justice at any time, or whoever, being a juvenile proceeded against under chapter one hundred and nineteen or sections fifty-seven to sixty of chapter two hundred and eighteen — so that the same shall read: —

Section 18. Whoever having been arraigned in the municipal court of the city of Boston prior to October first, nineteen hundred and twenty-six, or before any other district court or a trial justice at any time, or whoever, being a juvenile proceeded against under chapter one hundred and nineteen or sections fifty-seven to sixty of chapter two hundred and eighteen, is convicted of a crime before a district court or trial justice may appeal to the superior court, and at the time of conviction shall be notified of his right to take such appeal. The case shall be entered in the superior court on the return day next after the appeal is taken, and the appellant shall be committed to abide the sentence of said court until he recognizes to the commonwealth, in such sum and with such surety or sureties as the court or trial justice requires, with condition to appear at the superior court on said return day and at any subsequent time to which the case may be continued, if not previously surrendered and discharged, and so from time to time until the final sentence, order or decree of the court thereon, and to abide such final sentence, order or decree, and not depart without leave, and in the meantime to keep the peace and be of good behavior. In cases of misdemeanor the appellant may, in the discretion of the court or trial justice, be held on his own recognizance. The appellant shall not be required to advance any fees upon claiming his appeal or in prosecuting the same.

SECTION 5. So much of this act as authorizes the making and promulgation of rules shall take effect ninety days after its passage and the remainder shall take effect on October first, nineteen hundred and twenty-six.

AN ACT TO PROVIDE FOR WAIVER OF JURY TRIAL IN THE SUPERIOR COURT IN CRIMINAL CASES OTHER THAN CAPITAL CASES.

Be it enacted, etc., as follows:

SECTION 1. Section six of chapter two hundred and sixty-three of the General Laws is hereby amended by inserting in

the first line thereof after the word "crime" the words: — punishable by death, — and by adding at the end thereof the words: — but in all other criminal cases the party may by leave of court, if he shall so elect when called upon to plead or later, be tried by the court instead of by a jury, and in such cases the court shall have jurisdiction to hear and try such cause and render judgment and sentence thereon, — so that the same shall read: —

Section 6. A person indicted for a crime punishable by death shall not be convicted thereof except by confessing his guilt in open court, by admitting the truth of the charge against him by his plea or demurrer, or by the verdict of a jury accepted and recorded by the court; but in all other criminal cases the party accused may by leave of court, if he shall so elect when called upon to plead or later, be tried by the court instead of by a jury, and in such cases the court shall have jurisdiction to hear and try such cause and render judgment and sentence thereon.

SECTION 2. Section two of chapter two hundred and seventy-eight of the General Laws is hereby amended by adding at the end thereof the words: — unless the person indicted elects to be tried by the court as provided by law, — so that the same shall read: —

Section 2. Issues of fact joined upon an indictment or complaint shall, in the superior court, be tried by a jury drawn and returned in the manner provided for the trial of issues of fact in civil cases unless the person indicted elects to be tried by the court as provided by law.

AN ACT TO EXPEDITE THE COLLECTION OF DEBTS.

Be it enacted, etc., as follows:

Chapter two hundred and thirty-one of the General Laws, as amended by chapter five hundred and nine of the acts of nineteen hundred and twenty-two, is hereby further amended by inserting after section fifty-nine A the following section: —

Section 59B. In all actions of contract where the plaintiff seeks to recover a debt or liquidated demand in money payable by the defendant the plaintiff may, at any time after the defendant has appeared, on affidavit made by himself or by any other person who can swear to the facts of his own knowledge, verifying the cause of action and stating that in his belief there is no defense thereto, move for the immediate entry of judgment

for the amount of the debt or other demand, together with interest if any is claimed. The motion may be set down for hearing upon four days' notice and after hearing the court may, unless the defendant by affidavit, by his own evidence or otherwise, shall show to the satisfaction of the court that he has a good defense to the action or disclose such facts as may be deemed sufficient to entitle him to defend, enter an order for judgment for the plaintiff for the amount of the debt or other demand, with interest if any is due; and such judgment shall be entered at the expiration of seven days from the order unless the defendant in the meanwhile files a demand for a trial; and if such demand is filed the court may order the case advanced for speedy hearing and, whether the case is so advanced or not, if at the trial the plaintiff recovers an amount not less than that named in the order and such amount is not less than five hundred dollars costs shall be taxed against the defendant in an amount sufficient to cover the reasonable expenses of the plaintiff, including counsel fees, incurred after the filing of the demand for a trial, such costs to be taxed after summary hearing by the justice presiding at the trial or, if he is unable to hear the matter, by any other justice of the court. If the amount named in the order does not exceed five hundred dollars or if the plaintiff recovers an amount less than that named in the order, or if the defendant prevails, costs shall be taxed as in ordinary cases, but the court may in its discretion increase the amount by an allowance on account of expenses of either party as may be deemed just.

AN ACT TO ESTABLISH PROCEDURE FOR DECLARATORY JUDGMENTS.

Be it enacted, etc., as follows:

Section three of chapter two hundred and fourteen of the General Laws is hereby amended by adding at the end thereof the following: —

(11) Suits to obtain declaratory relief. Such suits shall not be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the court may make binding declarations of right whether any consequential relief is or could be claimed or not.

AN ACT CONCERNING THE LAW OF OTHER STATES AND COUNTRIES.

Be it enacted, etc., as follows:

Chapter two hundred and thirty-three of the General Laws is hereby amended by striking out sections seventy, seventy-one and seventy-two thereof and substituting therefor the following: —

Section 70. The courts shall take judicial notice of the law of any other state or country whenever the same shall be material.

AN ACT TO ALLOW THE SUPERIOR COURT TO MAKE RULES IN EQUITY.

Be it enacted, etc., as follows:

Chapter two hundred and fourteen of the General Laws is hereby amended by striking out section six thereof and substituting the following: —

Section 6. Procedure, process and practice in equity causes originating in the Superior Court, or transferred thereto from any other court, shall while in the superior court be regulated by rules made from time to time by that court.

AN ACT RELATIVE TO INTERROGATORIES IN CIVIL CASES.

Be it enacted, etc., as follows:

General Laws, chapter two hundred and thrity-one, amended by statute nineteen hundred and twenty-two, chapter three hundred and fourteen, shall be further amended by striking out section sixty-one and inserting in place thereof the following: —

Section 61. Any party, after the entry of a writ or the filing of a bill or petition, may interrogate an adverse party for the discovery of facts and documents admissible in evidence at the trial of the case. The several courts may by rule limit the number of interrogatories which a party may file as of right, and interrogatories in addition to those filed as of right may be filed on special leave given by the court. The burden shall be on the interrogating party to show at the hearing of a motion for leave to file interrogatories in addition to those filed as of right, or on a motion to compel answers to interrogatories filed, that the facts or documents which are the subject of his motion will be manifestly admissible at

the trial. In deciding upon an application to file interrogatories in addition to interrogatories filed as of right, or to compel answers to interrogatories filed, the justice shall take into account any offer which may be made by the parties sought to be interrogated to deliver particulars, to make admissions, or to produce documents relating to any matter in question. A justice hearing a motion for leave to file further interrogatories or a motion to compel answers to interrogatories filed may in his discretion make an order for the payment to the other party of such sum as he shall find is the reasonable expense (including counsel fees) to which the other party has been wrongfully put in the premises in case he is of opinion that the motion for leave to file further interrogatories was in whole or in part vexatious or that the refusal or neglect to answer interrogatories filed was in whole or in part evasive. The word "party" in this section, in sections sixty-two to sixty-five inclusive, and in section sixty-seven, shall be deemed to include parties intervening or otherwise admitted after the beginning of the suit.

AN ACT CONCERNING THE ADMISSION OF FACTS AND DOCUMENTS IN CIVIL CASES.

Be it enacted, etc., as follows:

Section sixty-nine of chapter two hundred and thirty-one of the General Laws is hereby amended by striking out the whole of said section and inserting in place thereof the following: —

Section 69. In any action at law or suit in equity a party may by notice in writing filed in court and served on the other party not less than ten days before the trial of the action or suit call upon the other party to admit for the purposes of the case only any specific fact or facts or the execution of any paper or papers; and if no answer is filed within six days after service of such notice or within such further time as the court may on motion allow the truth of the fact or facts or the execution of the paper or papers shall for the purposes of the case be taken as admitted. If the party upon whom such notice is served refuses to admit any fact or the execution of any paper mentioned in the notice, the reasonable expense, including counsel fees, of proving such fact or the execution of such paper, as determined after summary hearing by the justice presiding at the trial, shall be paid by said party to the other party unless the justice certifies that the refusal

to admit was reasonable and the amount thereof shall be added to the taxable costs of the party in whose favor such amount is awarded or deducted from any judgment or decree against him.

AN ACT TO REGULATE PRACTICE AS TO EXCEPTIONS IN SUITS IN EQUITY.

Be it enacted, etc., as follows:

In suits in equity a final decree shall be entered although exceptions have been taken or a bill of exceptions has been filed and allowed, but execution and operation of the decree so entered shall be stayed until the exceptions have been disposed of unless the judge who made the ruling to which the exception or exceptions were taken finds that the exceptions are immaterial, frivolous or intended for delay.

AN ACT CONCERNING THE JURISDICTIONAL LIMITS OF DISTRICT COURTS IN CIVIL CASES.

Be it enacted, etc., as follows:

SECTION 1. Section nineteen of chapter two hundred and eighteen of the General Laws, as amended by section twelve A of the acts of nineteen hundred and twenty-two and by section one of chapter fifty-seven of the acts of nineteen hundred and twenty-four, is hereby further amended by striking out the words "when the debt or damages demanded or the value of the property alleged to be detained does not exceed three thousand dollars or in the municipal court of the city of Boston, five thousand dollars," so that the same shall read: —

Section 19. District courts shall have original jurisdiction concurrent with the superior court of actions of contract tort and replevin and also of actions of summary process under chapter two hundred and thirty-nine and proceedings under section forty-one of chapter two hundred and thirty-one.

SECTION 2. Section one hundred and four of chapter two hundred and thirty-one of the General Laws is hereby amended by inserting after the word "jury" in the fourth line thereof the words: — or, if the debt or damages demanded or the value of the property detained exceeds three thousand dollars or in the municipal court of the city of Boston, five thousand dollars, a claim of trial by the superior court, with or without jury, — and

by adding at the end thereof the words: — or for trial by the court as the case may be, — so that the same shall read: —

Section 104. No other party to such action shall be entitled to an appeal. In lieu thereof, any such party may, within two days after the time allowed for entering his appearance, file in said court a claim of trial by jury or, if the debt or damages demanded or the value of the property detained exceeds three thousand dollars or in the municipal court of the city of Boston, five thousand dollars, a claim of trial by the superior court, with or without jury, and an affidavit by his counsel of record, if any, and if none, the affidavit of such party, that in his opinion there is an issue of fact requiring trial in the cause, and that such trial is in good faith intended, together with the sum of three dollars for the entry of the cause in the superior court, and a bond in the penal sum of one hundred dollars, with such surety or sureties as may be approved by the plaintiff or the clerk or an assistant clerk of said municipal court, payable to the other party or parties to the cause, conditioned to satisfy any judgment for costs which may be entered against him in the superior court in said cause within thirty days after the entry thereof. The clerk shall forthwith transmit the papers and entry fee in the cause to the clerk of the superior court, and the same shall proceed as though then originally entered there, but may be marked for trial upon the lists of causes advanced for speedy trial by jury or for trial by the court as the case may be.

AN ACT CONCERNING INQUESTS.

Be it enacted, etc., as follows:

SECTION 1. Section eight of chapter thirty-eight of the General Laws is hereby amended by striking out the word "shall" in the first, eighth and eleventh lines and substituting the word: — may, — and by striking out the last sentence in said section and substituting the following: — An inquest shall be held upon the written request of the attorney general or the district attorney, — so that said section shall read: —

Section 8. The court or trial justice may thereupon hold an inquest, from which all persons not required by law to attend may be excluded. The district attorney or any person designated by him may attend the inquest and examine the witnesses, who may be kept separate so that they cannot converse with each other

until they have been examined. Within sixty days after any case of death by accident upon a railroad, electric railroad, street railway or railroad for private use an inquest may be held, and the court or justice shall give seasonable notice of the time and place thereof to the department of public utilities. Within a like period after any case of death in which a motor vehicle is involved, an inquest may be held, and the court or justice shall give seasonable notice of the time and place thereof to the department of public works. An inquest shall be held upon the written request of the attorney general or the district attorney.

SECTION 2. This act shall take effect upon its passage.

AN ACT TO INCREASE THE NUMBER OF SPECIAL JUSTICES OF DISTRICT COURTS IN DISTRICTS HAVING A POPULATION OF ONE HUNDRED THOUSAND OR MORE.

Be it enacted, etc., as follows:

The first paragraph of section six of chapter two hundred and eighteen of the General Laws is hereby amended by striking out the second sentence in said paragraph and substituting the following: — District courts having within their respective judicial districts a population of one hundred thousand or more as ascertained by the last preceding national or state census shall consist of one justice and three special justices; the secretary of the commonwealth shall certify to the governor the population of said judicial districts, — so that said paragraph shall read: —

Section 6. The district court of Nantucket shall consist of one justice and one special justice. District courts having within their respective judicial districts a population of one hundred thousand or more as ascertained by the last preceding national or state census shall consist of one justice and three special justices; the secretary of the commonwealth shall certify to the governor the population of said judicial districts. Each of the other district courts, except the municipal court of the city of Boston, shall consist of one justice and two special justices.

AN ACT RELATIVE TO ADMISSION TO THE BAR.

Be it enacted, etc., as follows:

Section thirty-six of chapter two hundred and twenty-one of the General Laws is hereby amended by striking out, in lines

four to nine thereof, the words "provided that any applicant for admission to the bar who is a graduate of a college or who has complied with the entrance requirements of a college, or who has fulfilled for two years the requirements of a day or evening high school or of a school of equal grade, shall not be required to take any examination as to his general education", — so as to read: —

Section 36. Said board may, subject to the approval of the supreme judicial court, make rules with reference to examinations for admission to the bar and the qualifications of applicants therefor, and determine the time and place of such examinations, and conduct the same. The expenses of said board, as certified by its chairman and approved by a justice of the supreme judicial court, shall be paid by the commonwealth, together with such compensation to each member as the justices of the supreme judicial court approve, but said expenses and compensation shall not be in excess of the amounts paid to the commonwealth under the following section.

APPENDIX D.

SAMPLES OF ENGLISH BILLS OF COSTS.

1.

FOR ORDINARY COSTS AS BETWEEN PARTY AND PARTY.

(From Indermaur's "Manual of Practice," 10th ed., pages 400–403.)

(25) PRECEDENT OF PLAINTIFF'S ORDINARY COSTS OF AN ACTION IN THE KING'S BENCH DIVISION (*ante*, p. 237).

[*Heading and Title as in Form* (1).]

PLAINTIFF'S COSTS.

Easter Sittings, 1915.

1915.		£	*s.*	*d.*
April 17. —	Letter before action	0	3	6
20. —	Instructions to sue	0	6	8
	Writ of summons and copy to file and attending to issue	0	6	8
	Instructions for statement of claim	0	13	4
	Special indorsement	0	5	0
	Paid issuing	0	10	0
	Copy for service	0	1	0
	Service thereof	0	5	0
29. —	Attending searching for appearance	0	3	4
	Paid	0	1	0
May 1. —	Paid for summons for leave to sign judgment, under Order XIV., copy and service	0	11	6
	Instructions for affidavit in support	0	6	8
	Drawing same, folios 6	0	6	0
	Engrossing	0	2	0
	Attending deponent to be sworn	0	6	8
	Paid oath	0	1	6
	Paid filing	0	2	6
	Copy for defendant's solicitors	0	2	0
5. —	Perusing affidavit in opposition to summons, folios 8	0	2	8
	Attending summons when liberty to defend given	0	6	8
	Attending drawing up order	0	6	8
	Paid for order, copy and service	0	8	6
	If no application under Order XIV., then the following items should be charged:			
	Paid for summons for directions 10*s.*, copy and service	1	2	2
	Attending summons when directions given	0	6	8
	Attending drawing up order	0	6	8
	Paid for order, copy and service	0	8	6
17. —	Attending defendant giving consent to seven days' further time to defend	0	6	8
26. —	Perusing statement of defence	0	6	8
	Sittings fee	0	15	0

Trinity Sittings.

June 2. —	Notice of application for leave to administer interrogatories, copy and service	0	5	0
	Instructions for interrogatories	0	6	8

	Drawing same, folios 5	0	5	0
	Paid fee to counsel to settle	1	3	6
	Attending him	0	3	4
	Paid request to pay money into court	0	1	0
	Attending pay deposit into court	0	13	4
	Copy proposed interrogatories for defendant's solicitor	0	1	8
5. —	Attending application order made	0	6	8
	Attending drawing up order	0	6	8
	Paid for order, copy and service	0	8	6
	Copy interrogatories for service	0	1	8
	Service thereof	0	2	6
	Copy receipt for deposit for service	0	1	0
12. —	Perusing affidavit in answer to interrogatories, folios 10	0	3	4
	Paid for six prints	0	2	11
	Notice of application for discovery of documents by defendant, copy and service	0	5	0
	Paid for request to pay into court	0	1	0
	Attending paying deposit into court	0	13	4
	Copy receipt for service	0	1	0
15. —	Attending application, order made	0	6	8
	Attending drawing up order	0	6	8
	Paid for order, copy and service	0	8	6
20. —	Paid for copy affidavit, folios 10	0	3	4
	Perusing same	0	3	4
	Notice to inspect documents disclosed by affidavit, copy and service	0	4	0
22. —	Attending inspecting	0	6	8
23. —	Notice of trial, copy, and service	0	4	0
	2 copies writ with statement of claim thereon on entering action for trial	0	3	4
	2 copies statement of defence, folios 5 each	0	3	4
	2 copies reply, folios 3 each	0	2	0
	2 copies notice of trial	0	2	0
	2 copies order for directions	0	2	0
24. —	Attending to enter cause for trial	0	6	8
	Paid	2	0	0
	Instructions to counsel to advise on evidence	0	13	4
	Paid fee to counsel	2	4	6
	Attending him	0	6	8
25. —	Notice to produce documents	0	5	0
	Service	0	2	6
	Affidavit of service	0	5	0
	Copy notice to annex, folios 3	0	1	0
	Marking same as exhibit	0	1	0
	Paid oath and exhibit	0	2	6
	Paid filing	0	2	6
	Notice to inspect and admit documents	0	5	0
	Service	0	2	6
	Attending giving inspection of documents	0	6	8
	Perusing defendant's notice to produce	0	6	8
	The like to inspect and admit	0	6	8
	Attending inspecting documents	0	6	8
	Attending signing admission of documents	0	6	8
	Preparing subpœna *ad test*, and attending to issue	0	6	8
	Paid	0	5	0
	Copy for service	0	1	0

	Service thereof	0	5	0
	Preparing subpœna *duces tecum* and attending to issue	0	6	8
	Paid	0	5	0
	Copy for service	0	1	0
	Service thereof	0	5	0
	Attending witness, arranging for his attendance without subpœna	0	5	0
	Instructions for brief	5	5	0
	Drawing same, folios 40	2	0	0
	Fair copy	0	13	4
	Copy of writ with statement of claim thereon	0	1	8
	Copy of other pleadings and notice of trial, folios 11	0	3	8
	Copy of interrogatories for counsel, folios 5	0	1	8
	Print of answer to interrogatories, folios 10	0	1	8
	Copy plaintiff's notice to produce, folios 3	0	1	0
	Copy plaintiff's notice to inspect and admit, folios 3	0	1	0
	Copy defendant's notice to produce, folios 3	0	1	0
	Copy defendant's notice to inspect and admit, folios 3	0	1	0
	Paid fee to counsel	5	10	0
	Attending him	0	6	8
	Paid conference fee to counsel	1	6	0
	Attending to appoint same	0	3	4
July	2. — Writing four witnesses to attend court	0	8	0
	4. — Attending conference	0	13	4
	Attending court, cause in paper, but not reached	0	10	0
	5. — Attending court when judgment given for plaintiff	1	1	0
	Attendances searching list	0	13	4
	7. — Attending for certificate of result of trial	0	3	4
	Paid	1	0	0
	Drawing judgment	0	3	4
	Attending to enter	0	6	8
	Copy for office copy	0	1	0
	Paid and for office copy	1	0	6
	Drawing request to get money out of court paid in as security and attending getting master's signature / Attending bespeaking cheque and afterwards for same	0	13	4
	Attending obtaining reference to taxing master	0	6	8
	Copy judgment for him	0	1	0
	Preparing statement of parties	0	2	6
	Drawing bill of costs and copy for taxation, folios 14	0	9	4
	Copy for defendant's solicitor	0	4	8
	Attending taxing	0	13	4
	Sittings fee	0	15	0
	Paid for certificate of taxation	1	1	8

Paid witnesses as follows:

Mr. A., of Clerk, 2 days

Mr. B., of Builder, 2 days

Mr. C., of Gentleman, 2 days

Taxed of

Paid taxing fees

£

IN THE HIGH COURT OF JUSTICE, Chancery Division. *Mr. Justice Astbury.* 1914 C No. 950.

IN THE MATTER OF THE TRUSTS OF THE WILL DATED THE 20TH APRIL 1876 OF —— —— DECEASED.

BETWEEN —— —— —— (AN INFANT) BY —— —— —— HIS NEXT FRIEND,

Plaintiff.

AND

—— —— —— —— AND —— —— ——

Defendants.

AND IN THE MATTER OF THE TRUSTEE, ACT 1893.

AND IN THE MATTER OF THE FREEHOLD MANSION HOUSE AND HEREDITAMENTS KNOWN AS ROSEHILL SITUATE IN MAARON IN THE COUNTY OF CORNWALL SETTLED BY A SETTLEMENT MADE BY THE SAID WILL OF THE SAID WILLIAM CARTER DECEASED.

AND IN THE MATTER OF THE SETTLED LAND ACTS, 1882 TO 1890.

THE BILL OF COSTS OF THE DEFENDANT —— —— —— —— OF THIS ACTION TO BE TAXED AS BETWEEN SOLICITOR AND CLIENT PURSUANT TO ORDER DATED 11TH SEPTEMBER 1923.

PART I.

Hiliary Sittings, 1914.

1914.				
Mch 26. —	Instructions to defend		6	8
	Attending Messrs. Rawle Johnstone & Co. the Plaintiffs London Agents conferring generally on the position and they gave us certain information and particulars which we required		13	4
	Paid Mr. J. J. Hill for copy Wills of the Testator William Carter and of J. J. T. Carter and of the petition presented by Mr. R. T. C. Carter to reverse the decision of the Orphans Court of Philadelphia and copy letter from Mr. Mirkil to Mr. Carter folios 116	1 18 8		
	Perusing and considering in detail all the documents		1 18	8
	Writing to Mr. J. J. Hill in reply explaining our views as to the course to be pursued and the result of our interview with his London Agents & thereon . . .		5	
	Perusing Judgment of Judge La Morelle & Appellants Case and Appendix . .		1 1	
28. —	Writing Mr. J. J. Hill in reply to his further letter and explaining what we proposed to do		3	6
30. —	Writing to Mr. J. Jewell Hill very fully explaining our views on the position generally having regard to our consideration of the documents and asking him if he could obtain for us prints of the earlier proceedings in the American Courts .		5	

31. — Attending the Plaintiffs Agents accepting service of Originating Summons and undertaking to appear				6	8
Perusing Originating Summons folios 23				7	8
Apr. 1. — Writing to Mr. J. J. Hill in reply to further letter from him and that we would communicate with Mr. Mirkil our Clients American Solicitor and also as to Clause 7 of the Testator's Will and that the Summons as at present framed did not appear to raise this question				3	6
3. — Writing to Mr. J. Jewell Hill in reply to his further letter and that we would now write fully to Mr. Mirkil on the position generally				3	6
Entering appearance for Defendant R. C. T. Carter				6	8
Paid		2			
Notice of Appearance copy and service				4	
7. — Paid Mr. J. J. Hill for copy of further American proceedings viz.: —					
Petition of Thomas Lean & J. J. Carter & Decree thereon fo 29		9	8		
Resignation of C. F. Shoener and Appointment of Fidelity Trust Company fo 5		1	8		
Copy Decree as to payment of 25,000 dollars to Mr. Lean etc. fo 6		2			
Extract from Adjudication of Penrose J. fo 5		1	8		
Copy of Adjudication and Schedule fo 41		13	8		
Perusing the above documents (together fos 86)				1	8	8
Writing to Mr. Mirkil very long and special letter on the position generally advising thereon & for further instructions from Mr. Carter on the matter				5	
Sittings fee (not chargeable).					

Easter Sittings, 1914.

Apr. 28. — Writing to Mr. Mirkil long and special letter in reply to his explaining what we thought would be done with regard to postponing the determination of the questions to be raised here and advising as to the question of the expenditure on repairs and the course to be pursued in connexion therewith				5	
29. — Paid Messrs. Rawle Johnstone & Co. for copy affidavit of Mr. J. J. Hill fo 49		16	4		
Perusing same				16	4
Paid them for Copy Affidavit of Mr. P. Gert fos 24		8			
Perusing same				8	
May 5. — Attending before Master on Originating Summons when evidence in support read and fines fixed for evidence in reply and Summons adjourned generally with liberty to restore				13	4

		12. — Drawing Instructions to Counsel to advise as to the course to be pursued and as to filing evidence on the pending negotiations folios 21			1	1
		Fair Copy				7
		Copy Originating Summons for Counsel fo 23				7 8
		The like evidence in support for 73			1	4 4
		The like Will of Testator Wm. Carter folios 36				12
		The like Will of John J. T. Carter fo 34				11 4
	8	The like resignation of Mr. Shoener fo 5				2 4
	8	The like Decree dated 9 Decr. 1878 folios 6				2 8
		The like Petition of Thomas Lean and J. Carter & Answer fo 26				8 8
1	0	The like Adjudication and Schedule folios 41				14 8
		The like Petition of Mr. R. C. T. Carter for Bill of Review fo 41				13 8
		Paid Mr. Errington fee to advise and Clerk		3	5	6
		Attending him				6 8
		21. — Making Copy Questions and Opinion for Mr. Mirkil fo 9				3
		The like Originating Summons fo 23				7 8
		The like evidence in support fo 73			1	4 4
		Writing to Mr. Mirkil long and special letter therewith and explaining the position and asking for instructions				5
		June 8. — Attending Messrs. Rawle & Co. on their calling discussing the present position with regard to the evidence and otherwise and informing them what we were doing and they were to consider what course they should pursue				6 8
		Sittings fee				15

Trinity Sittings, 1914.

		9. — Writing to Messrs. Rawle & Co. in reply to their letter acquiescing in the course they suggested should be pursued and on the matter generally				3 6
		16. — Writing Messrs. Rawle & Co. that we were not filing evidence on behalf of Mr. R. C. T. Carter and requesting them to restore the Originating Summons				3 6
		Writing to Mr. Mirkle in reply to his letter and informing him what we had done				3 6
		24. — Attending before Master on Originating Summons when evidence fully discussed and same adjourned into Court for full argument				13 4
		Writing to Mr. Mirkel informing him of the result of appointment before the Master and thereon				3 6
		July 2. — Attending Court when Application made by Mr. Dighton Pollock to postpone the hearing of the Summons when the Judge gave				

		directions that it should not be in the list			
13	4	for hearing before the 21st instant . .		13	4
		Writing to Mr. Mirkil informing him the			
3	6	result of the Application and thereon .		3	6
		3. — Writing to Messrs. Rawle & Co. in reply to			
		their letter as to the hearing of the Appli-			
3	6	cation		3	6
		18. — Instructions for Brief on Originating Sum-			
		mons		1	1
6	8	Drawing Observations and fair copy . .		6	8
		Paid Mr. Errington with Brief and Clerk .	5 10		
		Attending him		6	8
		Paid him Conference fee and Clerk . .	1 6		
		Attending him		3	4
		24. — Attending Conference discussing and arrang-			
		ing course to pursue		13	4
		Attending Court when adjourned Summons			
		in the List but not reached . . .		6	8
		28. — Attending Court on adjourned Originating			
		Summons when after some discussion the			
		matter was directed to stand over gener-			
		ally with liberty to restore the Judge			
		taking the view that as there were future			
		interests involved in dealing with Ques-			
		tion No. 5 it was not advisable to deal			
		with such question at the present time .		1	1
		30. — Writing to Mr. Mirkil informing him fully			
		what had transpired on the hearing of			
		the Originating Summons and thereon			
		(long & special letter)		5	
Augt		1. — Attending settling Order		13	4
		Close Copy Minutes fo 7		2	4
		5. — Attending passing		6	8
		Attending searching Cause List . .		13	4
		Sittings fee		15	

Michaelmas Sittings, 1914.

Octr		16. — Writing to Mr. Mirkel in reply to his letter			
		explaining the present position of his			
		Client's appeal in the American Courts			
		on the subject of the present Originating			
		Summons and thereon		3	6
		Sittings fee (not chargeable).			

Hilary Sittings, 1915.

1915.					
Feby		16. — Writing to Mr. Murkil in reply to his letter			
		informing us the result of the application			
		to the Court of Appeal from the decision			
		of the Orphans Court explaining our views			
		and requesting him to let us know the			
		result of the further hearing in due course			
		so that the Chancery proceedings in			
		England might be brought to a termi-			
		nation		5	
		Sittings fee (not chargeable).			

Easter Sittings, 1915.

May 17. — Writing to Mr. Mirkil referring to his letter of last April enquiring what was the present position of the Appeal in America and indicating that it was desirable to bring the matter to a conclusion as soon as possible and fully on the matter . . 5

Sittings fee (not chargeable).

Hilary Sittings, 1916.

1916.

Apl 10. — Writing to Mr. Mirkil referring to his letter of June last enquiring the position and whether it was desired that we should take any further steps as there was not much time if the question had to be decided before the Long Vacation . . 3 6

Sittings fee (not chargeable).

Trinity Sittings, 1916.

July 27. — Writing to Messrs. Rawle & Co. that we understood the decision of the Supreme Court of America was adverse to Mr. Carter and enquiring what they proposed to do to get the pending Summons disposed of 3 6

Writing to Mr. Mirkil in reply to his letter explaining what we were doing and with our views as to payment of the expenses . 3 6

Sittings fee (not chargeable).

Michaelmas Sittings, 1916.

Octr 18. — Attending Mr. Errington in conference as to the present position having regard to the decisions of the American Courts and the suggestion that we on behalf of our Client should not contest the infants claims any further in the English proceedings when he expressed the view that this suggestion was not desirable in the circumstances but the matter should be brought before the Court again in some proper form and he was to write an opinion outlining what he thought ought to be done 13 4

Paid him Conference fee and Clerk . . 1 6

Attending him 3 4

Paid him fee to advise accordingly . . 1 3 6

Attending him.

Attending Messrs. Rawle Johnstone & Co. on the subject of their letter explaining the difficulty we felt in making the admission such as was suggested without further instructions from America and it was arranged that they and their Clients

	should consider the situation and determine a course of procedure as to which they were to communicate with us at a later date	6	8
20. —	Writing to Mr. Mirkil explaining what had transpired since our letter of the 27 June of the course we had pursued and sending a copy of Mr. Errington's opinion and for instructions and requesting copies of the Orders of the American Courts . .	5	
	Copy Opinion to accompany	2	
Decr 5. —	Writing to Mr. Mirkil in reply and with our views as to what decision the Court would arrive at on the questions referred to by him and on the matter	3	6
Dec. 6. —	Writing to Mr. Mirkil in reply to his further letter with the opinion of the Supreme Court this Brief & thereon . . .	3	6
	Perusing same fo 6	1	1
	Sittings fee (not chargeable).		

Hilary Sittings, 1917.

1917.			
Jan. 11. —	Writing Messrs. Rawle & Co. requesting them to restore the Originating Summons to the list in order to have the matter disposed of	3	6
	Writing Mr. Mirkil in reply informing him what we had done & the position of the matter	3	6
19. —	Copy letter from Messrs. Rawle Johnstone & Co. for Mr. Mirkil fo 8 . . .	2	8
	The like our reply	1	
	Writing Mr. Mirkil therewith & thereon & requesting him to let us have your instructions	3	6
	Writing to Messrs. Rawle & Co. that they might take it our Client would not agree to the decision of the American Courts being adapted in this Action . . .	3	6
Feb. 27. —	Writing Mr. Mirkil in reply that we adhered to the opinion expressed in our former letter & as to the probability of the Costs coming out of the Estate & fully thereon	5	
	Sittings fee (not chargeable).		

Easter Sittings, 1917.

May 14. —	Writing to Mr. Mirkill & requesting him to let us have his reply to our letter of the 19 Feby last & enclosing another copy of such letter in case it had not reached him .	5	
	Copy letters to enclose (having regard to the Submarine Warfare) . . .	4	
	Sittings fee (not chargeable).		

Trinity Sittings, 1917.

June 27. — Writing Mr. Mirkil in reply & that we had already informed Messrs. Rawle & Co. that Mr. Carter did not consent to Decision of the American Courts applying to the English proceedings & on the matter & that we should be glad to hear further from him on his receiving Mr. Carters reply to his letter . . . 3 6

29. — Writing Messrs. Rawle & Co. that we had now heard from Mr. Mirkil with regard to the attitude Mr. Carter would adopt with reference to the further questions they proposed to raise on the Summons which attitude would be governed by the decision on the question of construction & if in our Clients favour it would be contended the estate should remain in England subject to the jurisdiction of the English Courts & very fully thereon . 5

Writing Mr. Mirkil acknowledging receipt of his letter & informing him of our communication to Messrs. Rawle & Co. thereon . 3 6

July 5. — Writing Messrs. Rawle & Co. in reply that our instructions would not permit of our consenting to this Summons standing over until after the War & suggesting that it should be restored so as to deal with Question 5 in the first instance & then our Clients interest would be ascertained . 3 6

Sittings fee (not chargeable).

Michaelmas Sittings, 1917.

Oct. 30. — Writing Messrs. Rawle & Co. informing them of a further letter we had received from Mr. Mirkil & that we had no objection to the originating Summons standing over for the present but would communicate with them further if necessity arose . 3 6

Writing Mr. Mirkil in reply & informing him what we had arranged with Messrs. Rawle & Co. 3 6

Sittings fee (not chargeable).

Extra attendances letters telegrams messengers is not otherwise charged . . 1 1 3 3

PART III.

Michaelmas Sittings, 1920.

1920.

Dec. 30. — Writing to Messrs. Rawle & Co. to know the present position of the matter . . 3 6

Sittings fee (not chargeable).

Extra attendances letters &c.

Michaelmas Sittings, 1921.

1921.

Dec. 15. — Writing Messrs. Rawle & Co. to know the present position & whether their Client was yet able to come to England to attend the hearing of the Summons & thereon . 3 6

Sittings fee (not chargeable).

Hilary Sittings, 1922.

1922.

Apl 11. — Paid Messrs. Rawle & Co. for copy further affidavit of Mr. J. J. Hill fo 17 . . 7 7

Perusing same 5 8

18. — Attending inspecting exhibits thereto . 6 8

Perusing amended Originating Summons fo 30 10

Copy for Mr. Murkil fo 30 . . . 10

Writing them therewith & thereon & informing him the position & of the further appointment before the Master & generally on the matter 5

28. — Attending before Master on Originating Summons when leave given to amend & times fixed for evidence in answer and in reply 13 4

Sittings fee 15

Easter Sittings, 1922.

May 22. — Paid Messrs. Rawle & Co. for copy account Exhibit J. J. H. 6 to Mr. J. J. Hills affidavit fo 16 . . . . . 7 1

Perusing same 5 4

Paid them for copy report Exhibit J. J. H. 5 fo 20 . . . . . 8 11

Perusing same 6 8

Drawing instructions to Counsels to advise as to evidence in answer to the Plaintiffs further evidence (fo 6) 6

Fair copy 2

Copy amended Originating Summons for Counsels fo 30 10

The like further affidavit of Mr. J. Hill fo 17 5 8

The like accountants report exhibited fo 20 . 6 8

The like Statement of account fo 18 . . 6

The like Order for Trustees to pay income to Mr. M. H. Carter fo 9 . . . 3

Paid Mr. Errington fee to advise & Clerk . 1 3 6

Attending him 2 4

Sittings fee (not chargeable).

Hilary Sittings, 1923.

1923.

Feb. 12. — Writing Messrs. Rawle & Co. to know what was delaying the restoration of the Originating Summons & thereon . . 3 6

Mar. 9.	— Attending before Master on Originating Summons adjourned into Court for argument				13	4
	Writing Mr. Murkil informing him that the Summons had now been adjourned into Court & fully as to what had transpired since our last letter & on the matter				5	
	Attending searching Cause List				13	4
	Sittings fee				15	

Easter Sittings, 1923.

Apl. 17.	— Drawing Further Brief on Originating Summons fo 6				6	
	Fair Copy for Counsels				2	
	The like Exhibits J. J. H. 7 & J. J. H. 8 to further affidavit of Mr. Hill fo 19 & print					
8	10	216			8	10
	Paid fee to Mr. Errington with Brief & Clerk		11			
	Attending him				6	8
	Paid him conference fee & Clerk		1	6		
	Attending him				3	4
19.	— Attending Messrs. Rawle & Co. when they stated they had received a cable that their American Clients were desirous of attending the hearing & were coming to England at once & giving them consent to postponement of the hearing for a fortnight				6	8
26.	— Attending consenting to the proposed application being restored to the List for the 3rd or 4th prox.				6	8
May 4.	— Attending conference with Mr. Errington discussing & arranging course to pursue				13	4
	Attending Court on Originating Summons when same partially argued & adjourned to the 11th inst. & the Judge required inquiries to be made as to the status of the Orphans Court of Philadelphia (engaged greater part of day)				1 11	6
	Writing Mr. Mirkil informing him what transferred on the hearing today & fully					
5		thereon			5	
9.	— As suggested by Mr. Errington attending Mr. Barratt K. C. of the American Bar in conference as to the jurisdiction & as to the powers of the Orphans Court Philadelphia informing him the position & what was required & he arranged to consider the matter & write his opinion & after having written the opinion he would make the affidavit if required & we were to submit formal instructions				13	4
	Paid Mr. Barratt K. C. conference fee & clerk		2	7		
	Attending him				6	8

	Drawing Instructions to Counsels to advise fo 6			6
	Fair copy			2
	Paid Mr. J. A. Barratt K. C. fee to advise & clerk	5	10	
	Attending him			6 8
	Attending Mr. Errington in conference with Mr. Barratts opinion for assistance in the further arguments before the Judge when he stated that this would be sufficient without an affidavit			13 4
	Paid him conference fee & clerk	1	6	
	Attending him			3 4
11. —	Attending Court when hearing of adjourned Summons further proceeded with & adjourned until 17 inst. (Engaged greater part of the day)			1 11 6
	Writing Mr. Mirkil reporting what had transpired at the further hearing today			5
17. —	Attending Court when further hearing of Originating Summons continued & Judge decided that he was not bound by the decision of the American Courts which in his view was erroneous & he decided that the Plaintiff was not now absolutely entitled to the appointed property but would be entitled to the capital if he survived the period of 20 years from the testators death & directions given with regard to appointment of trustee to costs to be taxed as between solicitor & client & paid out of the investments (Engaged all day)			2 2
	Writing Mr. Mirkil long & special letter informing him fully what had transpired & the Order which had been made			5
	Attending searching Cause List			13 4
	Sittings fee			15

Trinity Sittings, 1923.

July 19. —	Writing Messrs. Rawle & Co. requesting to know what was delaying the drawing up of the Order & requesting them to let us have an appointment to settle same forthwith			3 6
Aug. 3. —	Attendances settling draft Order (long & special)			1 1
	Close Copy Minutes fo 20			6 8
Sep. 20. —	Attending passing			6 8
	Writing to Mr. Mirkil enclosing copy of the Order & very fully thereon as to its effect & the course to be pursued			5
	Copy Order to accompany fo 20			6 8
	Sittings fee			15

Michaelmas Sittings, 1923.

Oct. 12. —	Drawing Bill of Costs & Copy fo 67 . .		2	4 8
	Attending taxing		1	
	Paid Messrs. Rawle & Co. for copy Plaintiffs Bill of Costs fo			
	Attending taxing			
	Paid them for copy Bill of Costs of Defendant J. J. Hill fo			
	Attending taxing			
	Sittings fee			15
	Extra letters attendances telegrams telephones messengers &c. from 1st Sep. 1919 not otherwise charged		3	3

FINAL SUMMARY.

Part I:					
Profit charges			38 16 8		
Disbursements			17 4 8		
Part III:					
Profit charges			31 17 10		
Disbursements			23 16 1		
			111 15 3		
Less Taxed off, Part I	2 10 4				
Less Taxed off, Part III	18 10		3 9 2		
				108	6 1
Add 33⅓% do Part 3				10	6 7
				118	12 8
Taxing fee				3	
				£121	12 8

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(*Signed*) FRANK W. GRINNELL.

Sworn to and subscribed before me this 28th day of September, 1925.

(*Signed*) ARTHUR M. REED,
Notary Public.
(*My commission expires August 10, 1928.*)

[SEAL]

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